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Tuesday
March 14, 1989

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WHO: The Office of the Federal Register.

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WHERE: State Office Building Auditorium, Capitol Hill, Salt Lake City, UT
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 690, Amdt 1]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 690, Amendment 1, increases the quantity of California-Arizona navel oranges that may be shipped to market during the period March 3 through March 9, 1989. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 690, Amendment 1, (§ 907.990) is effective for the period March 3 through March 9, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528–S, P.O. Box 96456, Washington, DC 20090–6456. Telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This amendment is issued under Marketing Order 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1988–89 adopted by the Navel Orange Administrative Committee (Committee). The Committee conducted a telephone vote on March 8, 1989, to consider the current and prospective conditions of supply and demand and unanimously recommended an increase in the quantity of navel oranges deemed advisable to be handled in District 1 during the specified week. The Committee reports that due to an inadvertent mathematical error by Committee staff, District 1 did not have the correct number of cartons of oranges allotted to it in regulation 690. This amendment corrects that error.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navel, Oranges.

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.987 is revised to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 907.987 Navel Orange Regulation 690, Amendment 1.

The quantity of navel oranges grown in California and Arizona which may be handled during the period March 3, 1989, through March 9, 1989, is established as follows: (a) District 1: 1,276,000 cartons; (b) District 2: 234,000 cartons; (c) District 3: unlimited cartons; (d) District 4: unlimited cartons.

Dated: March 9, 1989.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 89–5895 Filed 3–13–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 113

Customs Regulations Amendments Concerning Access to Customs Security Areas at Airports

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule, correction.

SUMMARY: A document was published in the Federal Register (53 FR 29228) on August 3, 1988, setting forth amendments to Customs Regulations that provide that employers of persons requiring access to Customs security areas at airports post a bond. Under such bond the employer agrees that both it and its covered employees will comply with the regulations applicable to those areas and that the employer will pay liquidated damages for failure to do so. This document corrects an error that appeared in that document.

EFFECTIVE DATE: March 14, 1989.

FOR FURTHER INFORMATION CONTACT: Arnold L. Sarasky, Regulations and Disclosure Law Branch, (202) 566-8237.

SUPPLEMENTARY INFORMATION:

Background

A document was published in the Federal Register (53 FR 29228) on August 3, 1988, setting forth amendments to the Customs Regulations regarding employers of persons requiring access to Customs security areas at airports to file a bond assuring compliance with the Customs regulations applicable thereto. For employers already having a bond on file with Customs on Customs Form 301 containing the bond conditions set forth on § 113.62, 113.63 or § 113.64, Customs Regulations (19 CFR 113.62, 113.63, 113.64) relating to importers, brokers, custodians of bonded merchandise, or international carriers, a new bond was not required. For other employers, an Airport Customs Security Area Bond, as set forth in a new Appendix A to Part 113, Customs Regulations (19 CFR Part 113, Appendix A) was required. Due to a typographical error therein, the signature portion of such bond format, which provides for two groups of signatories, identifies each group of signatories as a principal rather than identifying one group as a principal and the other as a surety. This document corrects that error.

Correction

As corrected, Appendix A of Part 113, Customs Regulations (19 CFR Part 113, Appendix A), is revised to read as follows:

Appendix A to Part 113—Airport Customs Security Area Bond

Airport Customs Security Area Bond

_____

(name of principal)

of _____

and _____

(name of surety)

of _____

are held and firmly bound unto the United States of America in the sum of _____ dollars ($____), for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WITNESS our hands and seals this _____ day of _____, 19____.

WHEREAS, the principal (including the principal's employees, agents, and contractors) desires access to Customs airports security areas located at _____ Airport during the period of one year beginning on the _____ day of _____, 19____, and ending on the _____ day of _____, 19____, both dates inclusive;

Now, Therefore, the Condition of this Obligation is Such That—

The principal agrees to comply with the Customs Regulations application to Customs security areas at airports.

If the principal defaults on the condition of this obligation, the principal and surety jointly and severally, agree to pay liquidated damages of $1,000 for each default or such other amount as may be authorized by law or regulation.

Signed, Sealed, and Delivered in the Presence of—

_____

_____

Name

Address

_____

_____

_____

Name

Address

Principal (SEAL)

_____

_____

Name

Address

_____

_____

Name

Address

_____

_____

_____

Name

Address

Surety (SEAL)

_____

_____

Name

Address

Dated: March 8, 1989.

Arnold L. Sarasky,

Acting Chief, Regulations and Disclosure Law Branch.

[FR Doc. 89-5783 Filed 3-13-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 201

[Docket No. R-89-1439; FR-2621]

Technical Amendments to Title I Property Improvement and Manufactured Home Loans Regulations

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Technical amendments.

SUMMARY: The purpose of this document is to amend typographical and other errors in the Title I regulations as published in Part 201 of Title 24 of the Code of Federal Regulations.

EFFECTIVE DATE: March 14, 1989.

FOR FURTHER INFORMATION CONTACT: Robert J. Coyle, Director, Title I Insurance Division, Department of Housing and Urban Development, Room 9160, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-6880. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: A number of typographical and other errors have been discovered in the Title I regulations (24 CFR Part 201), as published in the Code of Federal Regulations. Many (but not all) of these errors occurred when the Title I regulations were published in the Federal Register on October 25, 1985 (50 FR 43516). Because these errors were not detected at the time, they were carried over into the 1986 and later editions of the Code of Federal Regulations.

Also, on September 3, 1987 (53 FR 33404), the Department published in the Federal Register, an amendment to the Title I regulations. Because of an error in that publication, § 201.11(c) (1), (2), and (3) were omitted from the April 1, 1988 edition of the Code of Federal Regulations. This rule will reinstate those paragraphs, as well as correct the typographical errors found in the CFR.

A Finding of No Significant Impact with respect to the environment has

been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The number of small entities impacted by the rule is not expected to be substantial. This rule only contains technical changes to the Title I regulations by correcting typographical errors found in the Code of Federal Regulations and reinstating § 201.11(c) (1), (2), and (3) that were omitted from the CFR.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 24, 1988 (53 FR 41974) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Manufactured homes, Manufactured homes and lots, Reporting and recordkeeping requirements.

Accordingly, the Department amends 24 CFR Part 201 as follows:

PART 201—[AMENDED]

1. The authority citation for 24 CFR Part 201 continues to read as set forth below:

Authority: Sec. 2, National Housing Act (12 U.S.C. 1703); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In the Table of Contents for Part 201, change the title of § 201.18 to read, "Modification agreement or repayment plan."

3. In the Table of Contents, capitalize the "A" in "Administration' in the title of Subpart E.

§ 201.3 [Amended]

4. In § 201.3(a), capitalize the "P" in "Provisions" and insert a comma immediately thereafter.

5. In § 201.3(b), remove the hyphen between "Note" and "Provisions".

6. In § 201.3(c), replace "and" the first time it appears with "of", so that it reads "Subpart D, Insurance of Loans, * * *".

§ 201.10 [Amended]

7. In § 201.10(a)(2), replace "uppaid" with "unpaid".

8. In § 201.10(b)(3)(i), hyphenate "HUD-approved".

9. In § 201.10(g), insert "*Minimum loan amount.*" as the paragraph heading.

§ 201.11 [Amended]

10. In § 201.11(b), begin paragraph (b)(2) on a new line and capitalize "The" the first time "the" appears.

11. In § 201.11(c), add paragraphs (c) (1), (2) and (3) after the introductory sentence:

* * * * *

(c) * * *

(1) The term of a loan made to refinance a borrower's existing insured property improvement loan or existing insured manufactured home loan shall not exceed the maximum term permitted under paragraph (a) or (b) of this section for the particular type of loan, so long as the final maturity from the date of the original loan does not exceed the following time limits:

(i) 22 years for a manufactured home improvement loan;

(ii) 20 years for a manufactured home lot loan;

(iii) 30 years for a multi-module manufactured home and lot in combination; and

(iv) 25 years for all other property improvement and manufactured home loans.

(2) The term of a loan made to refinance a borrower's existing uninsured manufactured home purchase loan or existing uninsured combination loan shall be based upon the appraisal required under § 201.10(f)(3), but in any case shall not exceed the maximum term permitted under paragraph (b) of this section for the particular type of loan.

(3) Where a borrower's existing uninsured manufactured home lot loan is being refinanced in connection with the purchase of a manufactured home, the term of the combination loan shall not exceed the maximum term permitted under paragraph (b) of this section for that particular type of loan.

§ 201.12 [Amended]

12. In the last sentence of § 201.12, replace "of" the second time it appears with "or", so that it reads "partnership or trust".

§ 201.13 [Amended]

13. In the third sentence of § 201.13, replace "of" the second time it appears with "for", so that it reads "for the benefit".

§ 201.18 [Amended]

14. In § 201.18, change the title to read "Modification agreement or repayment plan.".

§ 201.22 [Amended]

15. In § 201.22(a)(5), replace "manufacturer" with "manufactured".

§ 201.23 [Amended]

16. In § 201.23(b)(3), hyphenate "traded-in" the first time it appears.

§ 201.26 [Amended]

17. In § 201.26(b)(3)(vi), insert a comma after "loan" the first time it appears.

§ 201.28 [Amended]

18. In § 201.28(a), insert a comma after "hazards" the first time it appears, and replace "regulation" with "regulations".

§ 201.32 [Amended]

19. In the second sentence of § 201.32(a), replace "of" the fourth time it appears with "on", so that it reads "losses on such loans", and insert a comma after "section".

20. In § 201.32(d)(3), insert a comma after "record".

§ 201.51 [Amended]

21. In § 201.51(a)(2)(i), insert a comma after "loan".

22. In § 201.51(a)(2)(ii), insert a comma after "property".

23. In § 201.51(a)(2)(iv), replace "§ 201.55(b)" with "§ 201.55(a)".

§ 201.55 [Amended]

24. In the second sentence of § 201.55(b)(2), insert commas after "loan" and "default".

Dated: March 9, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 89-5881 Filed 3-13-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8244]

Consent Dividends

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the consent dividend provisions of section

565 of the Internal Revenue Code of 1986. A review of the legislative history of section 565 has prompted certain amendments to the regulations under section 565. These amendments will provide the public with additional guidance to comply with the provisions of section 565.

EFFECTIVE DATE: These regulations are effective for tax years ending after December 15, 1987.

FOR FURTHER INFORMATION CONTACT: David Bergkuist of the Office of the Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224 (Attention: CC:CORP:T:R (INTL–313–87)) (202–566–6457, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–0043. The estimated annual burden associated with the collection of information in this final rule is 45 minutes per respondent.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer TR:FP, Washington, DC 20224, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Background

On December 15, 1987, the **Federal Register** published proposed amendments (52 FR 47554) to the Income Tax Regulations (26 CFR Part 1) under section 565 of the Internal Revenue Code of 1986. These amendments to the prior regulations under section 565 shall be applicable for tax years ending after December 15, 1987. Written comments to the notice were received. No public hearing was held. After consideration of all comments regarding the proposed amendments, those amendments are adopted by this Treasury Decision with revisions in response to those comments. The significant comments and revisions are discussed below.

Explanation of Provisions

In response to comments, the language of § 1.565–1(a)(2) has been expanded to make it clear that a corporation, 50 percent or more of whose adjusted ordinary gross income is adjusted income from rents, continues to be able to utilize the consent dividend under section 565, as described in section 542(a)(2)(B)(iii), for purposes of avoiding personal holding company status. In addition, certain stylistic and organizational changes were made that were not intended to have substantive effect.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore a Regulatory Impact Analysis is not required. Although this Treasury Decision was preceded by a notice of proposed rulemaking that solicited public comments, it has been determined that the notice was not required by 5 U.S.C. 553 since the regulations proposed in that notice and adopted by this Treasury Decision will not have a significant impact on a substantial number of small entities. Therefore, a final Regulatory Flexibility Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal authors of these regulations are David Bergkuist of the Office of the Associate Chief Counsel (International), within the Office of Chief Counsel, and Susan Thompson Baker of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, other personnel from offices of the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects

26 CFR Part 1

Income taxes, Corporations, Tax avoidance, Holding companies.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805, unless otherwise noted. * * *

§§ 1.565.1T through 1.565.6T [Removed]

Par. 2. Sections 1.565–1T through 1.565–6T are removed.

Par. 3. New §§ 1.565–1 through 1.565–3, § 1.565–5, and § 1.565–6 are added at the appropriate place to read as follows:

§ 1.565–1 General rule.

(a) *Consent dividends.* The dividends paid deduction, as defined in section 561, includes the consent dividends for the taxable year. A consent dividend is a hypothetical distribution (as distinguished from an actual distribution) made by:

(1) A corporation that has a reasonable basis to believe that it is subject to the accumulated earnings tax imposed in part I of subchapter G, chapter 1 of the Code, or

(2) A corporation described in part II (personal holding companies or a corporation with adjusted income from rents described in section 543(a)(2)(A) which utilizes the consent dividends described in section 543(a)(2)(B)(iii) to avoid personal holding company status) or part III (foreign personal holding companies) of subchapter G or in part I (regulated investment companies) or part II (real estate investment trusts) of subchapter M, chapter 1 of the Code.

A consent dividend may be made by a corporation described in this paragraph to any person who owns consent stock on the last day of the taxable year of such corporation and who agrees to treat the hypothetical distribution as an actual dividend, subject to the limitations in section 565, § 1.565–2, and paragraph (c)(2) of this section, by filing a consent at the time and in the manner specified in paragraph (b) of this section.

(b) *Making and filing of consents.* (1) A consent shall be made on Form 972 in accordance with this section and the instructions on the form issued therewith. It may be made only by or on behalf of a person who was the actual owner on the last day of the corporation's taxable year of any class of consent stock, that is, the person who would have been required to include in gross income any dividends on such stock actually distributed on the last day of such year. Form 972 shall contain or be verified by a written declaration that it is made under the penalties of perjury. In the consent such person must agree to include in gross income for his

taxable year in which or with which the taxable year of the corporation ends a specific amount as a taxable dividend.

(2) See paragraph (c) of this section and § 1.565–2 for the rules as to when all or a portion of the amount so specified will be disregarded for tax purposes.

(3) A consent may be filed at any time not later than the due date of the corporation's income tax return for the taxable year for which the dividends paid deduction is claimed. With such return, and not later than the due date thereof, the corporation must file Forms 972 duly executed by each consenting shareholder, and a return on Form 973 showing by classes the stock outstanding on the first and last days of the taxable year, the dividend rights of such stock, distributions made during the taxable year to shareholders, and giving all the other information required by the form. Form 973 shall contain or be verified by a written declaration that is made under the penalties of perjury.

(c) *Taxability of amounts specified in consents.* (1) The filing of a consent is irrevocable, and except as otherwise provided in section 565(b), § 1.565–2, and paragraph (c)(2) of this section, the full amount specified in a consent filed by a shareholder of a corporation described in paragraph (a) of this section shall be included in the gross income of the shareholder as a taxable dividend. Where the shareholder is taxable on a dividend only if received from sources within the United States, the amount specified in the consent of the shareholder shall be treated as a dividend from sources within the United States in the same manner as if the dividend has been paid in money to the shareholder on the last day of the corporation's taxable year. See paragraph (b) of this section relating to the making and filing of consents, and section 565(e) and § 1.565–5, with respect to the payment requirement in the case of nonresident aliens and foreign corporations.

(2) To the extent that the Commissioner determines that the corporation making a consent dividend is not a corporation described in paragraph (a) of this section, the amount specified in the consent is not a consent dividend and the amount specified in the consent will not be included in the gross income of the shareholder. In addition, where a corporation is described in paragraph (a)(1) but not paragraph (a)(2) of this section, to the extent that the Commissioner determines that the amount specified in a consent is larger than the amount of earnings subject to the accumulated earnings tax imposed by part I of subchapter G, such excess is not a consent dividend under paragraph (a) of this section and will not be included in the gross income of the shareholder.

(3) Except as provided in section 565(b), § 1.565–2 and paragraph (c)(2) of this section, once a shareholder's consent is filed, the full amount specified in such consent must be included in the shareholder's gross income as a taxable dividend, and the ground upon which a deduction for consent dividends is denied the corporation does not affect the taxability of a shareholder whose consent has been filed for the amount specified in the consent. For example, although described in part I, II, or III of subchapter G, or part I or II of subchapter M, chapter 1 of the Code, the corporation's taxable income (as adjusted under section 535(b), 545(b), 556(b), 852(b)(2), or 857(b)(2), as appropriate) may be less than the total of the consent dividends.

(4) A shareholder who is a nonresident alien or a foreign corporation is taxable on the full amount of the consent dividend that otherwise qualifies under this section even though that payment has not been made as required by section 565(e) and § 1.565–5.

(5) Income of a foreign corporation is not subject to the tax on accumulated earnings under part I of subchapter G, chapter 1 of the Code except to the extent of U.S. source income, adjusted as permitted under section 535. See section 535 (b) and (d) and § 1.535–1(b). Therefore, foreign source earnings (other than those distributions subject to resourcing under section 535(d)) of a foreign corporation that is not described in paragraph (a)(2) of this section cannot qualify for consent dividend treatment. Accordingly, a consent dividend made by a foreign corporation described in paragraph (a)(1) of this section shall not be effective with respect to all of the corporation's earnings, but shall relate solely to earnings which would have been, in the absence of the consent dividend, subject to the accumulated earnings tax.

§ 1.565–2 Limitations.

(a) *General rule.* Amounts specified in consents filed by shareholders or other beneficial owners of a corporation described in § 1.565–1(a) are not treated as consent dividends to the extent that—

(1) They would constitute a preferential dividend or

(2) They would not constitute a dividend (as defined in section 316), if distributed in money to shareholders on the last day of the taxable year of the corporation. If any portion of any amount specified in a consent filed by a shareholder of a corporation described in the preceding sentence is not treated as a consent dividend under section 565(b) and this section, it is disregarded for all tax purposes. For example, it is not taxable to the consenting shareholder, and paragraph (c) of § 1.565–1 is not applicable to this portion of the amount specified in the consent.

(b) *Preferential Distribution.* (1) A preferential distribution is an actual distribution, or a consent distribution, or a combination of the two, which involves a preference to one or more shares of stock as compared with other shares of the same class or to one class of stock as compared with any other class of stock. See section 562(c) and § 1.562–2.

(2) The application of section 565 (b) (1) and § 1.565–2 (b) may be illustrated by the following examples:

Example (1). The X Corporation, a personal holding company, which makes its income tax returns on the calendar year basis, has 200 shares of stock outstanding, owned by A and B in equal amounts. On December 15, 1987, the corporation distributes $600 to B and $100 to A. As a part of the same distribution, A executes a consent to include $500 in his gross income as a taxable dividend although such amount is not distributed to him. The X Corporation, assuming the other requirements of section 565 have been complied with, is entitled to a consent dividends deduction of $500. Although the consent dividend is deemed to have been paid on December 31, 1987, the last day of the taxable year of the corporation, the total amount of all distributions constitutes a single nonpreferential distribution of $1200.

Example (2). The Y corporation, a personal holding company, which makes its income tax returns on the calendar year basis, has one class of consent stock outstanding, owned in equal amounts by A, B, and C. If A and B each receive a distribution in cash of $5,000 and C consents to include $3,000 in gross income as a taxable dividend, the combined actual and consent distribution of $13,000 is preferential. See section 562 (c) and § 1.562–2 (a). Similarly, if no one receives a distribution in cash, but A and B each consents to include $5,000 as a taxable dividend in gross income and C agrees to include only $3,000, the entire consent distribution is preferential.

Example (3). The Z Corporation, which makes its income tax returns on the calendar year basis and is subject, for the taxable year in question, to the accumulated earnings tax, has only two classes of stock outstanding, each class being consent stock and consisting of 500 shares. Class A, with a par value of $40 per share, is entitled to two-thirds of any distribution of earnings and profits. Class B, with a par value of $20 per share, is entitled to one-third of any distribution of earnings and profits. On December 15, 1987, there is distributed on the class B stock $2 per share,

or $1,000, and shareholders of the class A stock consent to include in gross income amounts equal to $2 per share, or $1,000. The entire distribution of $2,000 is preferential, inasmuch as the class B stock has received more than its pro rata share of the combined amounts of the actual distributions and the consent distributions.

(c) *Section 316 Limitation.* (1) An additional limitation under section 565 (b) is that the amounts specified in consents which may be treated as consent dividends cannot exceed the amounts which would constitute a dividend (as defined in section 316) if the corporation had distributed the total specified amounts in money to shareholders on the last day of the taxable year of the corporation. If only a portion of such total would constitute a dividend, then only a corresponding portion of each specified amount is treated as a consent dividend.

(2) The application of section 565 (b) (2) and § 1.565–2 (c) may be illustrated by the following example:

Example. The X Corporation, a corporation described in § 1.565–(a) (1) or (2), which makes its income tax returns on the calendar year basis, has only one class of stock outstanding, owned in equal amounts by A and B. It makes no distributions during the taxable year 1987. Its earnings and profits for the calendar year 1987 amount to $8,000, there being at the beginning of such year no accumulated earnings or profits. A and B execute proper consents to include $5,000 each in their gross income as a dividend received by them on December 31, 1987. The sum of the amounts specified in the consents executed by A and B is $10,000, but if $10,000 had actually been distributed by the X corporation on December 31, 1987, only $8,000 would have constituted a dividend under section 316 (a). The amount which could be considered as consent dividends in computing the dividends paid deduction for purposes of the accumulated earnings tax is limited to $8,000, or $4,000 of the $5,000 specified in each consent. The remaining $1,000 in each consent is disregarded for all tax purposes. (In the case of a personal holding company, see also the example in § 1.565–3(b).)

§ 1.565–3 Effect of consent.

(a) *General Rule.* The amount of the consent dividend that is described in paragraph (a) of § 1.565–1 shall be considered, for all purposes of the Code, as if it were distributed in money by the corporation to the shareholder on the last day of the taxable year of the corporation, received by the shareholder on such day, and immediately contributed by the shareholder as paid-in capital to the corporation on such day. Thus, the amount of the consent dividend will be treated by the shareholder as a dividend. The shareholder will be entitled to the dividends received deduction under section 243 or 245 with respect to such consent dividend. The basis of the shareholder's consent stock in a corporation will be increased by the amount thus treated in his hands as a dividend which he is considered as having contributed to the corporation as paid-in capital. The amount of the current dividend will also be treated as a dividend received from sources within the United States in the same manner as if the dividend had been paid in money to the shareholders. Among other effects of the consent dividend, the earnings and profits of the corporation will be decreased by the amount of the consent dividends. Moreover, if the shareholder is a corporation, its accumulated earnings and profits will be increased by the amount of the consent dividend with respect to which it makes a consent.

(b) *Example.* The application of section 565 (c) may be illustrated by the following example:

Example. Corporation A, a personal holding company and a calendar year taxpayer, has one shareholder, individual B, whose consent to include $10,000 in his gross income for the calendar year 1987 has been timely filed. A has $8,000 of earnings and profits at the beginning of 1987. A has $10,000 of undistributed personal holding company income (determined without regard to distributions under section 316(b)(2)) for 1987. B must include $10,000 in his gross income as a taxable income and is treated as having immediately contributed $10,000 to A as paid-in capital. See section 316(b)(2).

§ 1.565–5 Nonresident aliens and foreign corporations.

(a) *Withholding.* In the event that a corporation makes a consent dividend, as described in § 1.565–1 (a), to a shareholder that is subject to a withholding tax under section 1441 or 1442 on a distribution of cash or other property, the corporation must remit an amount of tax equal to the withholding tax that would be imposed under section 1441 or 1442 if an actual cash distribution equal to the consent dividend had been paid to the shareholder on the last day of the corporation's taxable year. Such payment must be in one of the following forms:

(1) Cash,

(2) United States postal money order,

(3) Certified check drawn on a domestic bank, provided that the law of the place where the bank is located does not permit the certification to be rescinded prior to presentation,

(4) A cashier's check of a domestic bank, or

(5) A draft on a domestic bank or a foreign bank maintaining a United States agency or branch and payable in United States funds.

The amount of such payment shall be credited against the tax imposed on the shareholder.

§ 1.565–6 Definitions.

(a) *Consent stock.* (1) The term "consent stock" includes what is generally known as common stock. It also includes participating preferred stock, the participation rights of which are unlimited.

(2) The definition of consent stock may be illustrated by the following example:

Example. If in the case of the X Corporation, a personal holding company, there is only one class of stock outstanding, it would all be consent stock. If, on the other hand, there were two classes of stock, class A and class B, and class A was entitled to 6 percent before any distribution could be made on class B, but class B was entitled to everything distributed after class A had received its 6 percent, only class B stock would be consent stock. Similarly, if class A, after receiving its 6 percent, was to participate equally or in some fixed proportion with class B until it had received a second 6 percent, after which class B alone was entitled to any further distributions, only class B stock would be consent stock. The same result would follow if the order of preferences were class A 6 percent, then class B 6 percent, then class A a second 6 percent, either alone or in conjunction with class B, then class B the remainder. If, however, class A stock is entitled to ultimate participation without limit as to amount, then it, too, may be consent stock. For example, if class A is to receive 3 percent and then share equally or in some fixed proportion with class B in the remainder of the earnings or profits distributed, both class A stock and class B stock are consent stock.

(b) *Preferred dividends.* (1) The term "preferred dividends" includes all fixed amounts (whether determined by percentage of par value, a stated return expressed in a certain number of dollars per share, or otherwise) the distribution of which on any class of stock is a condition precedent to a further distribution of earnings or profits (not including a distribution in partial or complete liquidation). A distribution, though expressed in terms of a fixed amount, is not a preferred dividend, however, unless it is preferred over a subsequent distribution within the taxable year upon some class or classes of stock other than one on which it is payable.

(2) The definition of preferred dividends may be illustrated by the following example:

Example. If, in the case of the X Corporation, there are only two classes of stock outstanding, class A and class B, and

class A is entitled to a distribution of 6 percent of par, after which the balance of the earnings and profits are distributable on class B exclusively, class A's 6 percent is a preferred dividend. If the order of preferences is class A $6 per share, class B $6 per share, then class A and class B in fixed proportions until class A receives $3 more per share, then class B the remainder, all of class A's $9 per share and $6 per share of the amount distributable on class B are preferred dividends. The amount which class B is entitled to receive in conjunction with the payment to class A of its last $3 per share is not a preferred dividend, because the payment of such amount is preferred over no subsequent distribution except one made on class B itself. Finally, if a distribution must be $6 on class A, $6 on class B, then on class A and class B share and share alike, the distribution on class A of $6 and the distribution on class B of $6 are both preferred dividends.

PART 602—[AMENDED]

Par. 12. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 13. Section 602.101(c) is amended by inserting in the appropriate place in the table:

§ 1.565–1	1545–0043.
§ 1.565–2	1545–0043.
§ 1.565–3	1545–0043.
§ 1.565–5	1545–0043.
§ 1.565–6	1545–0043.

Lawrence B. Gibbs,
Commissioner of Internal Revenue.
Approved:
O. Donaldson Chapoton,
Assistant Secretary of the Treasury.
January 13, 1989.
[FR Doc. 89–5884 Filed 3–13–89; 8:45 am]
BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 518

[Army Reg. 340–17]

Release of Information and Records From Army Files; Special Designation of Initial Denial Authority

AGENCY: Department of the Army.
ACTION: Final rule.

SUMMARY: The Department of the Army is designating special Initial Denial Authority for records pertaining to Army Base Closure and Realignment.

EFFECTIVE DATE: March 14, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Angela R. Petrarca, Policy and Strategy Directorate, Office of the Director of Information Systems for Command, Control, Communications and Computers, Office of the Secretary of the Army, Washington, DC 20310–0107.

SUPPLEMENTARY INFORMATION: This amendment designates special initial denial authority as follows: Director of Management, Office of the Chief of Staff, Army, for Army records pertaining to Closure and Realignment of Military Installations under Title II (section 201) of the Defense Authorization Amendments and Base Closure and Military Realignment Act of 1988.

Lists of Subjects in 32 CFR Part 518

Information, Archives and records, Privacy, Freedom of information.

Accordingly, 32 CFR Part 518 is amended as follows:

PART 518—[AMENDED]

1. The authority citation for Part 518 continues to read as follows:

Authority: 5 U.S.C. 552.

2. Section 518.15 is amended by adding paragraph (a)(4)(xviii) to read as follows:

§ 518.15 Initial determinations.

* * * * *

(a) * * *

(4) * * *

(viii) The Director of Management, Office of the Chief of Staff, is designated to act on requests for records relating to closure and realignment of military installations under Title II (section 201) of the Defense Authorization Amendments and Base Closure and Military Realignment Act of 1988.

* * * * *

John O. Roach II,
Army Liaison Officer with the Federal Register.
[FR Doc. 89–5768 Filed 3–10–89; 2:40 pm]
BILLING CODE 3710–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–88–36]

Drawbridge Operation Regulations; Clearwater Pass, FL

AGENCY: Coast Guard, DOT.
ACTION: Final rule.

SUMMARY: At the request of the City of Clearwater, the Coast Guard is changing the regulations governing the Clearwater Pass (SR 699) drawbridge between Sand Key and Clearwater Beach, Florida by adding one hour to the existing regulated period. This change is being made because of a significant increase in highway traffic on weekends and holidays with slight shift in peak traffic periods. This action will accommodate the current needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on April 13, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Ian Mac Cartney, telephone (305) 536–4103.

SUPPLEMENTARY INFORMATION: On December 20, 1988, the Coast Guard published proposed rules (53 FR 51125) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated January 3, 1989. In each notice, interested persons were given until February 3, 1989, to submit comments.

Drafting Information

The drafters of these regulations are Mr. Ian Mac Cartney, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Comments

Four comments were received. One commenter supported the proposal. Two commenters supported the original request for 20 minute openings and the extra hour of regulation. One commenter opposed the extra hour of regulation citing a concern for navigational safety. The Coast Guard has carefully considered these comments, however, no additional information was presented to justify modifying the existing regulation with the exception of adding an extra hour to the regulated period. The final rule remains unchanged from the proposed rule published on December 20, 1988.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant

economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.277(b) is revised to read as follows:

§ 117.277 Clearwater pass.

* * * * *

(b) From 11 a.m. to 6 p.m. on Saturdays, Sundays, and federal holidays the draw need open only on the hour, quarter hour, half hour, and three quarter hour. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

* * * * *

Dated: February 27, 1989.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 89–5656 Filed 3–13–89; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 8E3589/R1019; FRL 3537–1]

Pesticide Tolerance for Imazethapyr

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule established a tolerance for residues of the herbicide imazethapyr (2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridine-carboxylic acid, as its ammonium salt) in or on soybeans at 0.1 part per million (ppm). The regulation was requested by American Cyanamid Co. and establishes the maximum permissible level for residues of the herbicide in or on soybeans.

EFFECTIVE DATE: March 14, 1989.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register on February 3, 1988 (53 FR 3075), which announced that the American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540, has submitted pesticide petition (PP) 8F3589 to EPA proposing to amend 40 CFR Part 180 by establishing a tolerance for residues of the herbicide imazethapyr (2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridine-carboxylic acid, as its ammonium salt) in or on the raw agricultural commodity soybeans at 0.1 ppm.

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The data considered in the petition include: an 18-month feeding/oncogenic study with mice fed dosages of 0, 150, 750, and 1,500 milligrams/kilogram/day (mg/kg/day) with no oncogenic effects observed under the conditions of the study at dose levels up to and including 1,500 mg/kg/day (highest dose tested [HDT]) and a systemic no-observed-effect level (NOEL) of 750 mg/kg/day; a 2-year feeding/oncogenic study in rats fed dosages of 0, 50, 250, and 500 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose levels up to and including 500 mg/kg/day (HDT) and a systemic NOEL of 500 mg/kg/day (HDT); a 1-year feeding study in dogs fed dosage levels of 0, 25, 125, and 250 mg/kg/day with a NOEL of 25 mg/kg/day; a teratology study in rats fed dosage levels of 0, 125, 375, and 1,125 mg/kg/day, with a maternal toxicity NOEL of 375 mg/kg/day and a developmental toxicity NOEL of 1125 mg/kg/day; a teratology study in rabbits fed dosage levels of 0, 100, 300 and 1,000 mg/kg/day with a maternal toxicity. NOEL of 300 mg/kg/day and a developmental toxicity NOEL of 1,000 mg/kg/day; a two-generation reproduction study in rats fed dosage levels of 0, 50, 250, and 500 mg/kg/day with a NOEL for systemic and reproductive effects of 500 mg/kg/day; a mutagenic test with *Salmonella typhimurium* (negative); an *in vitro* chromosomal aberration test in Chinese hamster ovary cells (positive without metabolic activation but at dose levels that were toxic to the cells and negative with metabolic activation); an *in vivo* chromosomal aberration test in rat bone marrow cells (negative); an unscheduled DNA synthesis study in rat hepatocytes (negative); and a dominanat-lethal study in rats (negative at doses up to and including 2,000 mg/kg).

The provisional acceptable daily intake (PADI) based on the 90-day dog feeding study (NOEL of 250 mg/kg/day) and an uncertainty factor of 1,000 is calculated to be 0.25 mg/kg/day. The theoretical maximum residue contribution (TMRC) for this tolerance is calculated to be 0.000034 mg/kg/day. The current action will occupy 0.014 percent of the ADI. There are no published tolerances for this chemical. The pesticide is useful for the purposes of this tolerance rule.

The rat chronic feeding/oncogenicity study is acceptable as a chronic study but is supplemental as an oncogenicity study. There were no toxic effects observed at the top dose level (500 mg/kg/day), an indication that the maximum tolerated dose (MTD) was not reached. A repeat of this study will not be required for the use of soybeans, however, because (1) 500 mg/kg/day is within 50 percent of the upper limit dose necessary for an adequately conducted oncogenicity study on a chemical of low toxicity; (2) imazethapyr is structurally related to two other pesticides which tested negatively in oncogenicity studies in rats and mice; and (3) there were no positive mutagenicity studies for any of the three herbicides except for imazethapyr which had a positive result in the *in vitro* chromosomal aberration test, but only at dose levels that were toxic to the cells.

The nature of the residue is adequately understood, and adequate analytical methods (gas chromatography with a thermionic nitrogen-phosphorus detector) are available for enforcement purposes.

There are currently no actions pending against the registration of this chemical. No secondary residues are expected to occur in meat, milk, poultry, or eggs from this use.

Based on the above information considered by the Agency, it is concluded that the tolerance established by amending 40 CFR Part 180 will protect the public health, and the tolerance is therefore established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the Federal Register, file written objections with the Hearing Clerk, Environmental Protection

Agency, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this regulation from section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(**Authority:** Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)).)

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 7, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. New § 180.447 is added, to read as follows:

§ 180.447 Imazethapyr, ammonium salt; tolerance for residues.

A tolerance is established for residues of the herbicide imazethapyr, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridine-carboxylic acid, as its ammonium salt, in or on the following raw agricultural commodity:

Commodity	Parts per million
Soybeans	0.1

[FR Doc. 89–5913 Filed 3–13–89; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–7

[FPMR Temp. Reg. A–32]

First Duty Station Allowances for Relocated Presidential Transition Team Personnel Subsequently Appointed to Government Service

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This regulation implements authority to pay first duty station relocation allowances to eligible members of the Presidential Transition Team who relocate prior to selection for, or appointment to, certain Federal Government positions.

DATES: *Effective date:* This regulation is effective for travel and transportation performed on or after November 9, 1988.

Expiration date: This regulation expires November 9, 1989, unless sooner superseded or incorporated into the permanent regulations of GSA.

FOR FURTHER INFORMATION CONTACT: Larry Tucker, Travel and Transportation Regulations Staff (FBR), Washington, DC 20406, telephone FTS 557–1253 or commercial (703) 557–1253.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–7

Government employees, Travel, Travel allowances, Travel and transportation expenses.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Executive Order 11609, July 22, 1971; 5 U.S.C. 5707.

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter A to read as follows:

February 2, 1989.

Federal Property Management Regulations Temporary Regulation A–32

To: Heads of Federal agencies.

Subject: First duty station allowances for relocated Presidential Transition Team personnel subsequently appointed to Government service.

1. *Purpose.* This regulation implements authority to pay limited first duty station relocation allowances to eligible members of the Presidential Transition Team who relocate prior to selection for, or appointment to, certain Federal Government positions.

2. *Effective date.* This regulation is effective for travel and transportation performed on or after November 9, 1988.

3. *Expiration date.* This regulation expires November 9, 1989, unless sooner superseded or incorporated into the permanent regulations of GSA.

4. *Authority.* The provisions of this regulation are authorized by section 6 of the Presidential Transitions Effectiveness Act, Pub. L. 100–398, approved August 17, 1988, and by pertinent legislative history contained in House Report No. 100–532.

5. *Incorporation of pertinent Federal Travel Regulations provisions.* Paragraph 2–1.5f of the Federal Travel Regulations (FTR), insofar as it pertains to new appointees to shortage category positions and the Senior Executive Service, and to certain Presidential appointees, is hereby incorporated in this temporary regulation. The authority, procedures, and limitations contained in that paragraph apply to the individuals covered by this temporary regulation except as provided herein.

6. *Eligible individuals.* This regulation applies to new appointees who are appointed to positions described in 5 U.S.C. 5723 and in the incorporated FTR paragraph 2–1.5f who have performed transition activities under section 3 of the Presidential Transition Act of 1963 (3 U.S.C. 102 note), *Provided* That:

a. The appointment is made in the same fiscal year as the Presidential inauguration that immediately follows their transition activities; and

b. The appointee relocated on or after November 9, 1988 (to perform Presidential transitional activities), but before selection or appointment.

7. *Expenses covered.* An agency may authorize or approve reimbursement to new appointees covered by this regulation for the travel and transportation expenses listed below. However, payment shall be limited to expenses incurred from the appointee's actual place of residence from which he/she relocated on or after November 9, 1988, for the purpose of performing

Presidential transition activities to the assigned duty station of such appointee.

a. Travel expenses including per diem for the appointee as set forth in FTR paragraph 2–2.1;

b. Transportation expenses (but not per diem) for immediate family of the appointee as set forth in FTR paragraph 2–2.2a;

c. Mileage allowance, if privately owned vehicle is used in travel, as set forth in FTR paragraph 2–2.3;

d. Transportation and temporary storage of household goods as set forth in FTR part 2–8;

e. Nontemporary storage of household goods, if appointed to an isolated location, as set forth in FTR paragraph 2–9.1; and

f. Transportation of mobile homes as set forth in FTR part 2–7.

8. *Alternate origin or destination.* Travel and transportation authorized or approved under this regulation may be from or to any location, but reimbursement for such expenses shall be limited to the constructive cost of those expenses from and to the locations described in paragraph 7.

9. *Service agreement required.* Reimbursement for travel and transportation expenses authorized or approved under this regulation may not be made until the appointee has agreed in writing to remain in Government service for 12 months following the date of appointment.

10. *Effect on other regulations.* The FTR are currently being established as a separate system of regulations to be codified in Title 41 of the Code of Federal Regulations (CFR) (41 CFR 301–304). Prior to expiration, the provisions of this temporary regulation, unless sooner revised or superseded, will be incorporated, as appropriate, in the FTR. Until incorporation and codification of this temporary regulation takes place, the FTR provision cited in paragraph 5 and its corresponding CFR codified version will continue to be part of this temporary regulation by reference.

11. *Comments.* Comments concerning this regulation may be submitted to the General Services Administration, Federal Supply Service (FBR), Washington, DC 20406, not later than March 1, 1989, for consideration and possible incorporation in the permanent regulation.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89–5883 Filed 3–13–89; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 233

Application, Determination of Eligibility and Furnishing Assistance—Public Assistance Programs; Coverage and Conditions of Eligibility in Financial Assistance Programs; Alien Legalization; Correction

AGENCY: Family Support Administration, HHS.

ACTION: Final rule, correction.

SUMMARY: This document makes a correction to Alien Legalization final regulations that appeared in the Federal Register on August 12, 1988 (53 FR 30432–30433). In that publication, a revision to paragraph (c) of § 233.50 was omitted even though paragraph (c) was included in the interim final rule published on December 24, 1987 (52 FR 48689). This correction notice adds paragraph (c) to § 233.50.

FOR FURTHER INFORMATION CONTACT: Ms. Diann Dawson, Director, Division of Policy, Office of Family Assistance, Family Support Administration, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 252–5116.

List of Subjects in 45 CFR Part 233

Aliens, Grant Programs—social programs, public assistance programs, Reporting and recordkeeping requirements.

Approved: March 8, 1989.

James E. Lawson,

Acting Deputy Assistant Secretary for Information and Resources Management.

PART 233—[AMENDED]

1. The authority citation for Part 233 continues to read as follows:

Authority: Sections 1, 402, 406, 407, 1002, 1102, 1402, and 1602 of the Social Security Act (42 U.S.C. 301, 602, 606, 607, 1202, 1302, 1352, and 1382 note), and Section 8 of Pub. L. 94–114, 89 Stat. 579 and Part XXIII of Pub. L. 97–35, 95 Stat. 843, Pub. L. 97–248, 96 Stat. 324, and Pub. L. 99–603.

2. In § 233.50, paragraph (c) is revised to read as follows:

§ 233.50 Citizenship and alienage.

* * * * *

(c) An alien granted lawful temporary resident status pursuant to section 201, 302, or 303 of the Immigration Reform and Control Act of 1986 (Pub. L. 99–603) who must be either:

(1) A Cuban and Haitian entrant as defined in paragraph (1) or (2)(A) of section 501(e) of Pub. L. 96–422, as in effect on April 1, 1983, or

(2) An adult assistance applicant for OAA, AB, APTD, or AABD, or

(3) An applicant for AFDC who is not a Cuban and Haitian applicant under paragraph (c)(1) of this section who was adjusted to lawful temporary resident status more than five years prior to application.

All other aliens granted lawful temporary or permanent resident status, pursuant to sections 201, 302, or 303 of the Immigration Reform and Control Act of 1986, are disqualified for five years from the date lawful temporary resident status is granted.

* * * * *

[FR Doc. 89–5876 Filed 3–13–89; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 33

Refuge-specific Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) hereby amends certain regulations in 50 CFR Part 33 that pertain to fishing on individual national wildlife refuges (NWRs). Refuge fishing programs are reviewed annually to determine whether the regulations governing fishing on individual refuges should be modified. Changing environmental conditions, State and Federal regulations and other factors affecting fish populations and habitats may warrant such amendments. The modifications made ensure the continued compatibility of fishing with the purposes for which the individual refuges involved were established, and to the extent practical, make refuge fishing programs consistent with State regulations.

EFFECTIVE DATE: April 13, 1989.

FOR FURTHER INFORMATION CONTACT: Larry LaRochelle, Division of Refuges, Fish and Wildlife Service, 18th and C Streets NW., Washington, DC 20240; Telephone 202–343–4313.

SUPPLEMENTARY INFORMATION: 50 CFR Part 33 contians the provisions that govern fishing on NWRs. Fishing is regulated on refuges to (1) ensure compatibility with refuge purposes, (2) properly manage the fishery resource and (3) protect other refuge values. On

many refuges, the Service policy of adopting State fishing regulations is an adequate way of meeting these objectives. On other refuges it is necessary to supplement State regulations with refuge-specific fishing regulations which will ensure that the Service meets its management responsibilities, as outlined under the section entitled "Conformance with Statutory and Regulatory Authorities" in the proposed rule of November 1, 1988, at 53 FR 44043. Refuge-specific fishing regulations are issued only after the final publication of the opening of a wildlife refuge to fishing. These regulations may list the seasons, methods of taking fish, descriptions of open areas and other provisions. The Service has previously issued refuge-specific fishing regulations in 50 CFR Part 33.

This rule amends and supplements certain refuge-specific regulations in 50 CFR Part 33, §§ 33.8 through 33.51, which pertain to fishing on individual refuges in their respective alphabetically listed State.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. On November 1, 1988, at 53 FR 44043, the Service published a proposed rulemaking to amend certain regulations in 50 CFR Part 33 and invited the public to comment. No comments were received. Therefore, the proposed refuge-specific fishing regulations are here published, with minor technical corrections, as a final rulemaking.

Economic Effect

Executive Order 12291 requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more, a major increase in cost or prices for consumers, individual industries, government agencies or geographic regions, or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

These amendments to the codified refuge-specific fishing regulations make relatively minor adjustments to existing fishing programs. The regulations are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions. The benefits accruing to the public are expected to exceed the costs of administering this rule. Accordingly, the Department has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The Service has received approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements are presently approved by OMB under #1018–0014 Economic and Public Use Permits. Public reporting burden for these forms is estimated to average .1038 hours or 6.2 minutes per response for a total burden for all forms used of 15,146 hours, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of these forms to Information Collection Office, U.S. Fish and Wildlife Service, Washington, DC 20240; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) is ensured when fishing plans are developed and the determinations required by these Acts are made prior to the addition of refuges to the list of areas open to sport fishing in 50 CFR Part 33. Refuge-specific fishing regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular refuge. The changes made in this rulemaking will not significantly alter the existing uses of the refuges involved.

Information regarding the conditions that apply to individual refuge fishing programs, any restrictions related to public use on the refuge and a map of the refuge are available at refuge headquarters. This information can also be obtained from the Regional Offices of the Service at the addresses listed below.

Region 1—California, Hawaii, Idaho, Nevada, Oregon and Washington: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 Multnomah Street, Portland, Oregon 97232; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725–3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Puerto Rico, Tennessee and the Virgin Islands: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303; Telephone (404) 331–3588.

Region 5—Connecticut, Delaware, District of Columbia, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158, Telephone (617) 965–9222.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236–7920.

Region 7—Alaska: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; Telephone (907) 786–3538.

Primary Author

Larry LaRochelle, Division of Refuges, Fish and Wildlife Service, Washington, DC, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 33

Fishing, National Wildlife Refuge System, Wildlife refuges.

PART 33—[AMENDED]

Accordingly, Part 33 of Chapter I of Title 50 of the *Code of Federal*

Regulations is amended as set forth below:

1. The authority citation for Part 33 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd and 715i.

Refuge-Specific Fishing

2. Section 33.8 is amended by redesignating paragraphs (b) through (e) as paragraphs (c) through (f), adding new paragraph (b) and revising newly redesignated paragraph (d) to read as follows:

§ 33.8 Arkansas.

* * * * *

(b) *Cache River National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing or entry is not permitted in the waterfowl sanctuary areas from November 1 through February 28.

(2) The ends of trotlines must consist of a length of cotton line that extends from the points of attachment into the water.

* * * * *

(d) *Holla Bend National Wildlife Refuge.* Fishing, boating and frogging are permitted subject to the following conditions:

(1) Fishing and boating in all waters from March 1 through October 31 only from one-half hour before sunrise to one-half hour after sunset.

(2) Frogging from April 15 through October 31 only on that part of the old river channel that connects to the Arkansas River channel.

* * * * *

3. Section 33.9 is amended by revising paragraph (i) to read as follows:

§ 33.9 California.

* * * * *

(i) *Salton Sea National Wildlife Refuge.* Fishing is permitted only on designated areas of the refuge inundated by the Salton Sea subject to the following conditions:

(1) Fishing is permitted from April 1 through September 30.

(2) Only boat fishing is permitted.

* * * * *

4. Section 33.13 is amended by revising paragraph (g)(1), adding two new sentences to the end of paragraph (g)(2) and revising paragraph (m)(4) as follows:

§ 33.13 Florida.

* * * * *

(g) *Lower Suwanee National Widlife Refuge* * * *

(1) Fishing is permitted in interior creeks, sloughs and ponds from March 1 through October 31 only from sunrise to sunset except that fishing is not permitted in interior creeks, sloughs and ponds during quota big game hunts.

(2) * * * Boats are not permitted in refuge ponds. Boats may not be left on the refuge overnight.

* * * * *

(m) *St. Vincent National Wildlife Refuge* * * *

* * * * *

(4) Fishing seasons and largemouth bass length limits are as posted.

* * * * *

5. Section 33.17 is amended by revising paragraphs (a)(1) through (3), removing paragraph (a)(4); revising the last sentence of paragraph (b)(1), correcting the spelling of the word "Managers" in paragraph (b)(2), adding a last sentence to paragraph (b)(3), adding paragraphs (4) through (6); revising paragraph (c)(1), and removing paragraph (c)(6) as follows:

§ 33.17 Illinois.

(a) *Chautauqua National Wildlife Refuge.* * * *

(1) From December 15 through October 15 bank fishing is permitted and all refuge waters are open to fishing. From October 16 through December 14 fishing is permitted in the posted area that extends one-eighth of a mile around the Recreation Area, along Goofy Ridge Ditch, along the cross dike, and in all waters within the Public Hunting Area. Fishing is permitted during daylight hours only.

(2) The use of boats with motors greater than 25 horsepower is prohibited.

(3) Private boats must be removed from refuge waters overnight or moored at Boatyard No. 3.

(b) *Crab Orchard National Wildlife Refuge* * * *

(1) * * * All noncommercial fishing methods are permitted except underwater breathing apparatus is prohibited.

(2) * * * Managers * * *

(3) * * * It is unlawful to take largemouth bass between 12" to 15" in length from these lakes.

(4) Largemouth bass under 15" in length may not be taken from A–41, Bluegill, Blue Heron, Managers and Honkers Ponds.

(5) Largemouth bass under 21" in length may not be taken from Visitors Pond.

(6) It is unlawful to take catfish from their beds by submerging any object except hands under the water.

(c) *Mark Twain National Wildlife Refuge* * * *

(1) Fishing is permitted all year in the Big Timber and Gardner Divisions.

* * * * *

6. Section 33.18 is amended by adding paragraph (a)(6) as follows:

§ 33.18 Indiana.

(a) *Muscatatuck National Wildlife Refuge.* * * *

* * * * *

(6) Frogs and turtles may be taken by hook and line during daylight hours from areas open to fishing.

7. Section 33.22 is amended by revising paragraph (f) to read as follows:

§ 33.22 Louisiana.

* * * * *

(f) *Sabine National Wildlife Refuge.* Fishing, crabbing, crayfishing, and shrimp cast netting are permitted on designated areas of the refuge subject to the following conditions:

(1) Only fishing with rod and reel or pole and line is permitted. Shrimp may be taken only with a cast net. Crabs and crayfish may be taken only with ring nets up to 18 inches in diameter or hand lines. The use or possession of any other type of fishing, crabbing, crayfishing, and shrimping gear is prohibited except that persons using Hog Gulley, Headquarters, or West Cove Canals may only transport shrimp trawls, butterfly nets, or other nets from the boat ramps to Calcasieu Lake and return with their catch. Permits are required for sport jug fishing and gill netting.

(2) Fishing and public access is permitted from March 1 through October 15 on designated waterways and pools. Only bank fishing along Highway 27 is permitted year round.

(3) Fishing, crabbing, crayfishing, and shrimping is permitted from one hour before sunrise to one hour after sunset.

(4) Fishing in the East Cove unit is permitted year round except during the regular State duck hunting season. A 250-foot zone around Grand Bayou and Lambert Bayou water control structure is closed to public access and use except that boat access is permitted through the Grand Bayou water control structure.

(5) No person may take or possess more than 5 quarts of shrimp per vehicle per day except that the daily shrimp and possession limit is 5 gallons per vehicle during the State open inshore water season. Daily crab and crayfish limit is 100 pounds each per vehicle.

(6) Boats may not be dragged across levees. Outboard motors up to 25 horsepower are permitted in refuge pools. Outboard motors may be operated in designated refuge canals, waterways, and pools. The operation of

any type of boat motor in the refuge marshes is prohibited.

* * * * *

8. Section 33.37 is amended by amending paragraph (c)(2) by adding new words to the end of the sentence, revising paragraph (c)(5), adding paragraph (c)(6) and revising paragraph (d)(3) as follows:

§ 33.37 North Carolina.

* * * * *

(c) *Mattamuskeet National Wildlife Refuge* * * *

* * * * *

(2) * * * from one-half hour before sunrise to one-half hour after sunset except that the Highway 94 causeway is open to fishing and crabbing 24 hours per day.

* * * * *

(5) Airboats and sailboats are not permitted.

(6) Bank fishing is prohibited along the entrance road from Highway 94 to the Refuge Headquarters.

(d) *Pee Dee National Wildlife Refuge* * * *

* * * * *

(3) Only nonmotorized boats and boats with electric motors are permitted on Arrowhead Lake, Andrews Pond and Beaver ponds.

* * * * *

9. Section 33.40 is amended by redesignating paragraphs (a) through (e) as paragraphs (b) through (f) and adding new paragraph (a) to read as follows:

§ 33.40 Oklahoma.

(a) *Little River National Wildlife Refuge.* Fishing and frogging are permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted in the area designated on the refuge fishing map brochure.

(2) Access to refuge fishing is limited to designated roads and trails.

* * * * *

10. Section 33.41 is amended by revising paragraph (g)(2), and adding paragraphs (3) through (5) as follows:

§ 33.41 Oregon.

* * * * *

(g) *Umatilla National Wildlife Refuge* * * *

* * * * *

(2) Only non-motorized boats are permitted on refuge impoundments and ponds.

(3) Fishing is permitted only from 5:00 a.m. to 10:00 p.m.

(4) Impoundments and ponds in the Boardman Unit are closed to fishing.

(5) Bowfishing is prohibited.

* * * * *

11. Section 33.46 is amended by revising the second sentence and adding a third sentence to paragraph (a)(7), revising paragraph (e)(1), removing paragraph (e)(3) and adding paragraph (f) as follows:

§ 33.46 Tennessee.

(a) *Cross Creeks National Wildlife Refuge.* * * *

* * * * *

(7) * * * Largemouth bass from 12 inches to 15 inches must be immediately released unharmed. Possession of largemouth bass between 12 and 15 inches is prohibited.

* * * * *

(e) *Reelfoot Lake National Wildlife Refuge* * * *

(1) Fishing is permitted on the Long Point Unit (north of Upper Blue Basin) from March 15 through October 15 and on the Grassy Island Unit (south of the Upper Blue Basin) from February 1 through November 15.

* * * * *

(f) *Tennessee National Wildlife Refuge.* Fishing is permitted on designated portions of the refuge subject to the following conditions:

(1) The Duck River Bottoms and Busseltown Unit are closed to boat fishing from November 1 through March 15.

(2) Swamp Creek, Button Ford and Bennett's Creek embayments are closed to fishing from November 1 through March 15.

(3) Boats are restricted to "slow speed/minimum wake" on all refuge impoundments open to fishing.

* * * * *

12. Section 33.47 is amended by adding paragraphs (b) (4) and (5) and revising paragraph (d) as follows:

§ 33.47 Texas.

* * * * *

(b) *Arkansas National Wildlife Refuge.* * * *

(4) Fishermen must be off the refuge by dark.

(5) Fishermen must satisfy the Entrance Fee requirement authorized by the Emergency Wetlands Resources Act.

* * * * *

(d) *Hagerman National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) All refuge waters are open to fishing from April 1 through September 30.

(2) Fishing is restricted to the shoreline of Lake Texoma and Big Mineral Creek from October through March 31. Lines may not be attached to rubber bands, sticks, poles, trees or other fixed objects and are not permitted in refuge ponds or impoundments.

(3) Trotlines may be strung between anchored floats only. Lines may not be attached to rubber bands, sticks, poles, trees or other fixed objects and are not permitted in refuge ponds or impoundments.

(4) Fishing is not permitted from bridges or roadways.

13. Section 33.51 is amended by revising paragraphs (b)(1) through (2) and adding paragraphs (b)(4) through (5) to read as follows:

§ 33.51 Washington.

(b) *McNary National Wildlife Refuge.* * * *

(1) Fishing is permitted on the Hanford Islands and Strawberry Island Divisions from July 1 through September 30.

(2) Fishing is permitted on the McNary Division from February 1 through September 30.

* * * * *

(4) Fishing is permitted only from sunrise to sunset.

(5) Bowfishing is prohibited.

* * * * *

Dated: February 13, 1989.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-5620 Filed 3-13-89; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 260

[Docket No. 90131-9031]

Inspection and Certification; Fees and Charges

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of 1989 inspection fees.

SUMMARY: NOAA announces a change in the established rates for voluntary Department of Commerce fishery product grading and certification services consistent with its intent to provide inspection services at the lowest appropriate cost. The change results from a pay raise of 4.1 percent for Federal employees effective January 1, 1989, and increases in other operating costs such as rent, communications, and

utilities. The change represents an increase of 4.9 percent in the basic hourly rates.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Richard V. Cano, Division Chief, Inspection Services Division, National Marine Fisheries Service, Silver Spring, MD 20910, Phone 301–427–2355.

SUPPLEMENTARY INFORMATION: Regulations at 50 CFR 260.70 authorize the Secretary of Commerce to review and revise annually the rates for voluntary fishery product inspection, grading, and certification services by publishing a notice of fee changes in the **Federal Register**. The revised hourly rates reflect a 4.1 percent salary raise for Federal employees and increases in other operating costs such as rent, communications, and utilities. The basic hourly rates are increased by 4.9 percent. Below is the schedule of fees effective January 1, 1989. The procedure to calculate the Type II hourly fee has been changed by adding 40 percent, rather than 50 percent, to the Type I fee. This change will be reflected in an amendment to the regulations. The fees outlined for the State of Alaska are for services provided by cross-licensed State of Alaska inspectors. Charges for services provided in Alaska by NMFS inspectors will be at the rates as specified, plus cost of living allowances.

(a) Type I—Official establishment and product inspection—contract basis:

	Per hour
Regular (except Alaska)	$28.75
Overtime (except Alaska)	43.15
Sunday and legal holidays (2 hrs. minimum) (except Alaska)	57.50

(1) The contracting party will be charged at an hourly rate of $28.75 per hour for regular time; (2) $43.15 per hour for overtime in excess of 8 hours per shift per day; and (3) $57.50 per hour for Sunday and national legal holidays for services performed by inspectors at official establishment(s) operating under Federal inspection. In addition to any hourly service charge, a night differential fee equal to 10 percent of the employee's hourly salary will be charged for each hour of service provided after 6:00 p.m. and before 6:00 a.m. The contracting party will be billed monthly for services rendered in accordance with contractual provisions at the rates prescribed in this section. Products designated in a contract will be inspected during processing at the hourly rate for regular time, plus overtime, when appropriate.

(b) Type II—Lot inspection—Official and unofficially drawn samples:

	Per hour
Regular (except Alaska)	$40.25
Overtime (except Alaska)	60.40
Sunday and legal holidays (2 hrs. minimum) (except Alaska)	80.50
Minimum fee (except Alaska)	30.20

(1) For lot inspection services performed between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday—$40.25 per hour.

(2) For lot inspection services performed at times Monday through Friday other than 7:00 a.m. to 5:00 p.m., and on Saturdays (2 hrs. minimum)—$60.40 per hour.

(3) Sunday and national legal holidays (2 hrs. minimum)—$80.50 per hour.

(4) The minimum service fee to be charged and collected for inspection of any lot or lots of products requiring less than 1 hour will be $30.20.

(c) Type III—Miscellaneous inspection and consultative service.

When any inspection or related service such as, but not limited to, initial and final establishment surveys, appeal inspections, sanitation evaluation, Sanitary Inspected Fish Establishment (SIFE) inspections, sampling, product evaluation, and label and product specification review, requires charges to which the foregoing sections are clearly inapplicable, charges will be based on the rates set forth below:

	Per hour
Regular (except Alaska)	$35.95
Overtime (except Alaska)	53.95
Sunday and legal holidays (2 hrs. minimum) (except Alaska)	71.90
Minimum fee (except Alaska)	27.00

(1) For miscellaneous inspection and consultative services performed between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday—$35.95 per hour.

(2) For miscellaneous inspection and consultative services performed Monday through Friday other than 7:00 a.m. to 5:00 p.m., and on Saturdays (2 hrs. minimum)—$53.95 per hour.

(3) For miscellaneous inspection and consultative services performed on Sunday and national legal holidays (2 hrs. minimum)—$71.90 per hour.

(4) The minimum service fee to be charged and collected for miscellaneous inspection and consultative services requiring less than 1 hour will be $27.00.

(d) The hourly rates for the State of Alaska as performed by cross-licensed State of Alaska inspectors are as follows.

Charges for services provided in Alaska by NMFS inspectors will be at the rates stated previously, plus cost of living allowances. For Type I inspection, in addition to any hourly service charge, a night differential fee equal to 10 percent of the employee's hourly salary will be charged for each hour of service provided after 6:00 p.m. and before 6:00 a.m.

STATE OF ALASKA

	Area		
	Aleutian chain	South East and South Central; Anchorage, Kenai, Juneau, Ketchikan	Remainder of Alaska; Kodiak, Bristol Bay, Dillingham
Type I	(per hour)	(per hour)	(per hour)
Regular time	$36.45	$30.05	$32.20
Overtime	50.30	41.50	44.45
Sunday and legal holidays	62.70	51.70	55.40
Type II			
Regular time	46.30	38.80	40.90
Overtime	63.90	55.10	58.10
Sunday and legal holidays	83.80	71.00	75.25
Minimum	38.00	31.85	33.55
Type III			
Regular time	40.45	33.65	35.75
Overtime	53.80	45.10	48.30
Sunday and legal holidays	69.20	57.90	62.60
Minimum fee	36.00	29.95	32.20

(e) Analytical services: Applicants requesting specific analyses to be performed in a National Marine Fisheries Service laboratory will be charged at the prevailing rate. Analyses performed in a private laboratory will be charged at the current rate of that laboratory. Charges based on these fees will be in addition to any hourly rates charged for lot, miscellaneous, and consultative inspection service as well as to any hourly rates charged for inspection services provided under a contract at official establishments. A surcharge of 20 percent of the total charges for analytical services will be charged for administrative purposes.

Classification

This action is taken under the authority of 50 CFR 260.70 and complies with Executive Order 12291. It is not subject to the requirements of the

Regulatory Flexibility Act. It does not contain any information request as defined in the Paperwork Reduction Act. (16 U.S.C. 742e and U.S.C. 1622, 1624.).

Dated: January 4, 1989.

James E. Douglas, Jr.,

Deputy Assistant to the Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 88-5896 Filed 3-13-89; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 655

[Docket No. 81020-9009-2]

Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of Atlantic mackerel specification increase.

SUMMARY: NOAA issues this notice to increase the initial optimum yield (IOY) specification for Atlantic mackerel as required by the regulations governing this fishery. This increase is assigned to the total allowable level of foreign fishing (TALFF) specification. Regulations governing the Atlantic mackerel fishery require publication in the **Federal Register** of any adjustments, accompanied by reasons for such adjustments. This action is intended to foster the goal of the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) by creating benefits for the U.S. fishing industry.

DATES: Effective March 9, 1989. Comments are invited until March 24, 1989.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 508-281-3600, ext. 324.

SUPPLEMENTARY INFORMATION: The regulations at § 655.21(b)(2)(v) provide that initial annual specifications may be adjusted by the Regional Director, NMFS Northeast Region, after consulting with the Mid-Atlantic Fishery Management Council (Council). The Regional Director may adjust the IOY at any time during the fishing year if new information indicates that the IOY should be increased to produce maximum net benefits to the United States. The determination that maximum benefits will accrue is based upon consideration of factors outlined in the FMP.

Under 50 CFR 655.22, final initial specifications for Atlantic mackerel were published on January 19, 1989, (54 FR 2134) for the fishing year January 1 through December 31, 1989. The IOY for Atlantic mackerel resulted in a TALFF set at 30,000 metric tons (mt) and joint venture processing (JVP) set at 10,000 mt. The domestic mackerel industry, still considered in the stages of development, derives benefits from the purchase requirements associated with TALFF allocations. Specifically, foreign nations are required to purchase 3 mt of JVP and 1 mt of U.S processed product for every 9 mt of TALFF allocated.

To ensure that purchase requirements are met, initial allocations of TALFF were made in increments of 25 percent and JVP in 50 percent increments. Additional allocations were to be released when evidence was provided that these conditions were met.

In February, the Regional Director determined that four foreign nations had successfully met purchase requirements that warranted increases in IOY, domestic annual harvesting (DAH), JVP and TALFF (54 FR 7777, February 23, 1989). Additional purchase conditions have been successfully met by two foreign nations and the Regional Director, after consultation with the Council, has determined that an increase of 10,000 mt to the Atlantic mackerel IOY would benefit the domestic industry by continuing the viability of joint venture operations.

In accordance with § 655.22(f), notice is hereby given that the IOY for Atlantic mackerel of 91,000 mt is increased by 10,000 mt to a total of 101,000 mt. TALFF is increased by 10,000 mt from 41,000 mt to 51,000 mt.

Classification

This action is authorized by 50 CFR Part 655 and complies with Executive Order 12291.

Pursuant to 5 U.S.C. 551(d), in view of the need to avoid disruption of the foreign fishery and to maximize benefits to the domestic industry, NOAA has determined for good cause to waive the delay in the effective date of this notice.

List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 9, 1989.

Alan Dean Parsons,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-5822 Filed 3-9-89; 1:21 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 48
Tuesday, March 14, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 31

[Docket No. PRM-31-4]

GENE-TRAK Systems; Withdrawal of Petition For Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing, at the petitioner's request, a petition for rulemaking filed by GENE-TRAK System (PRM-31-4). The petition for rulemaking requested that the NRC established that 100 microcuries of phosphorus-32 used in GENE-TRAK Salmonella and Lisateria assays by a food laboratory is an exempt quantity under a general license according to 10 CFR 31.11. The petitioner is withdrawing the petition because of the introduction of new products and resulting changes in marketing strategy.

ADDRESSES: A copy of the petitioner's letter requesting withdrawal of the petition is available for public inspection or copying for a fee in the NRC Public Document Room, 2120 L Street, NW., lower level of the Gelman Building, Washington, DC 20555. A single copy of the petitioner's leter requesting the withdrawal of the petition may be obtained by writing the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Acting Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7758 or Toll Free: 800-368-5642.

Dated at Rockville, Maryland, this 9th day of March 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-5823 Filed 3-13-89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF COMMERCE

15 CFR Part 1150

[Docket No. 90248-9048]

Marking of Toy, Look-Alike and Imitation Firearms

AGENCY: Technology Administration, Commerce.

ACTION: Proposed rule.

SUMMARY: The Technology Administration of the United States Department of Commerce is today proposing rules to implement section 4 of the Federal Energy Management Improvement Act of 1988 ("Act") (Pub. L. No. 100-615) which prohibits the manufacturing, entering into commerce, shipping, transporting, or receipt of any toy, look-alike, or imitation firearm ("device") unless such device contains, or has affixed to it, a marking approved by the Secretary of Commerce. The proposed rule sets forth the method of marking established by section 4(b)(1) of the Act, an alternative method of marking when a device is not capable of being marked by the method established by section 4(b)(1), and three alternative methods of marking which may be used in all instances. In addition, the rule would waive marking requirements for any toy, look-alike, or imitation firearm that will be used only in the theatrical, movie, or television industries. Comments from the public are invited.

DATE: Comments on this proposed rule are invited and will be considered if received in writing no later than April 13, 1989.

ADDRESSES: Comments on the proposed rule should be submitted in writing to: The Under Secretary for Technology, Room 4203, Herbert Hoover Building, United States Department of Commerce, Washington, DC 20230. The public record for this rulemaking which will include all comments received is available for inspection and copying in the Department of Commerce's Central Reference and Records Inspection Facility, 14th Street between E Street and Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Stanley I. Warshaw, Associate Director for Industry and Standards, National Institute of Standards and Technology, (301) 975-4000, FAX (301) 926-0647.

SUPPLEMENTARY INFORMATION: Section 4(a) of the Federal Energy Management Improvement Act of 1988 provides that "[i]t shall be unlawful for any person to manufacture, enter into commerce, ship, transport, or receive any toy, look-alike, or imitation firearm unless such firearm contains, or has affixed to, a marking approved by the Secretary of Commerce * * *." 15 U.S.C. 5001(a)). Section 4(b)(1) of the Act establishes as an initial acceptable marking a permanently affixed, blaze orange plug inserted in the barrel of the toy, look-alike, or imitation firearm, recessed no more than 6 millimeters from the muzzle end of the barrel, and made an integral part of the device. 15 U.S.C. 5001(b)(1). Section 4(b)(2) authorizes the Secretary to approve an alternative marking for any toy, look-alike, or imitation firearm not capable of being marked with the requisite blaze orange plug and to waive the marking requirements for any device that will be used only in the theatrical, movie, or television industries. 15 U.S.C. 5001(b)(2). Section 4(b)(3) authorizes the Secretary to adjust or change the marking system established pursuant to sections 4(b) (1) & (2), after consulting with interested persons. 15 U.S.C. 5001(b)(3).

The Technology Administration held a public workshop at the National Institute of Standards and Technology, Gaithersburg, Maryland, on February 9, 1989, on the marking requirements of the Act. (See 53 FR 50987, Dec. 19, 1988). The workshop was attended by forty representatives of trade associations, manufacturers, importers, distributors and Federal agencies. Many attendees brought samples of toy, look-alike, and imitation firearms. Although not requested, written comments were submitted in advance and subsequent to the workshop. All written comments received will be placed in the record of this rulemaking and will be available for public inspection.

Based on the comments received and consultations at the workshop and

elsewhere with trade associations, manufacturers, importers, distributors, collectors, retailers, police chiefs, and Federal agencies, this proposed rule would maintian the blaze orange plug marking established by section 4(b)(1) and establish an alternative system of marking for water guns, air-soft guns, light emitting guns or other ejecting toy, look-alike or imitation firearms which, as such, can not be marked with a plug in the muzzle end of the barrel because it would restrict the opening necessary to discharge such things as water, non-metallic projectiles, and light. In such an instance, the required marking would be a blaze orange marking permanently affixed to the exterior surface of the barrel and covering the circumference of the barrel and extending from the muzzle end for a depth of at least 6 millimeters. The proposed rule also would adjust the statutory marking system by permitting three other methods of marking for use in the alternative irrespective of whether the device could be marked with the blaze orange plug or blaze orange muzzle marking. The three alternatives would be to mark the device at manufacture by: (1) Constructing it entirely of transparent or translucent materials which permit unmistakable observation of the device's complete contents; (2) permanently coloring the entire exterior surface of the device bright red, bright orange, bright yellow, bright green, or bright blue, either singly or as the predominant color in combination with other colors in any pattern; or (3) permanently coloring the entire exterior surface of the device predominantly in white in combination with one or more of the colors bright red, bright orange, bright yellow, bright green, or bright blue in any pattern. These alternatives were selected because they represent standard industry practice for most toy, look-alike, and imitation firearms and, in the opinion of those consulted, are sufficient to identify the device as a toy, look-alike, or imitation firearm rather than as a real firearm. Finally, the proposed rule would waive marking requirements for any toy, look-alike, or imitation firearm that only will be used in the theatrical, movie, or television industries.

Section 4(c) of the Act specifically excludes from the Act's marking requirements or any marking requirements established thereunder look-alike, non-firing, collector replicas of antique firearms designed, manufactured, and produced prior to 1898, and traditional B–B, paint-ball, or pellet-firing air guns that expel a projectile through the force of air pressure. 15 U.S.C. 5001(c). However, it is clear from the legislative history of section 4 that it was the intent of the Congress to also exclude from marking requirements traditional B–B, paint-ball, and pellet-firing air guns that expel a projectile through the force of compressed gas or mechanical spring action, or combination thereof. Accordingly, the proposed rule would exclude from marking requirements look-alike, non-firing, collector replicas of antique firearms designed, manufactured, and produced prior to 1898, and traditional B–B, paint-ball, or pellet-firing air guns that expel a projectile through the force of compressed air, compressed gas or mechanical spring action, or any combination thereof.

Additional Information:

Executive Order 12291

The Under Secretary for Technology has determined that this proposed rule is not a major rule within the meaning of section 1(b) of Executive Order 12291 because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies or geographic regions; or,

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, preparation of a Regulatory Impact Analysis is not required under Executive Order 12291.

Executive Order 12612

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Executive Order 12372

This proposed rule does not involve Federal financial assistance, direct Federal development, or the payment of any matching funds from a state or local government. Accordingly, the requirements of Executive Order 12372 are not applicable to this proposed rule.

Executive Order 12662

The Under Secretary for technology has determined that a 75-day comment period otherwise required under Executive Order 12662 would frustrate the achievement of ligitimate domestic objectives within the meaning of section (1)(b)(1) of Executive Order 12662. A 30-day comment period is being allowed.

Executive Order 12630

This proposed rule, if adopted, would not pose significant takings implications within the meaning of Executive Order 12630.

Regulatory Flexibility Act

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because the alternative markings conform to existing industry practices for most toy, look-alike, and imitation firearms, thus reducing the rule's impact to only where such practices are not followed. Thus, As a result, a Regulatory Flexibility Analysis is not required to be prepared under the Regulatory Flexibility Act.

Paperwork Reduction Act

This proposed rule does not contain a collection of information requirement subject to the requirements of the Paperwork Reduction Act.

National Environmental Policy Act

This proposed rule, if adopted, will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

List of Subjects in 15 CFR Part 1150

Commerce, Business and industry, Labeling, Hobbies, Imports, Exports, Shipping, Toys, Transportation, Freight.

Date: March 7, 1989.

Ernest Ambler,

Acting Under Secretary for Technology.

For the reasons set forth in the preamble, it is proposed that Title 15, Subtitle B of the Code of Federal Regulations be amended by adding a Chapter XI, consisting of Part 1150, to read as follows:

CHAPTER XI—TECHNOLOGY ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 1150—MARKING OF TOY, LOOK-ALIKE AND IMITATION FIREARMS

Sec.

Sec.
1150.4 Waiver.
1150.5 Preemption.
Authority: 15 U.S.C. 5001.

§ 1150.1 Applicability.

This part applies to toy, look-alike, and imitation firearms ("devices") having the general appearance, shape, and/or configuration of a firearm and produced or manufactured and entered into commerce on or after May 5, 1989 other than look-alike, non-firing, collector replicas of antique firearms modelled on a firearm designed, manufactured, and produced prior to 1898, and traditional B–B, paint-ball, or pellet-firing air guns that expel a projectile through the force of compassed air, compressed gas or mechanical spring action, or any combination thereof, as described in ASTM Standard F 589–85.

§ 1150.2 Prohibitions.

No person shall manufacture, enter into commerce, ship, transport, or receive any toy, look-alike, or imitation firearm ("device") covered by this part as set forth in § 1150.1 unless such device contains, or has affixed to it, one of the markings set forth in § 1150.3, or unless this prohibition has been waived by § 1150.4.

§ 1150.3 Approved markings.

The following markings are approved by the Secretary of Commerce:

(a) A blaze orange (*Federal Standard 595–A, Jan. 1984, color no. 12199*) solid plug permanently affixed to the muzzle end of the barrel as an integral part of the entire device and recessed no more than 6 millimeters from the muzzle end of the barrel.

(b) For any water gun, air-soft gun, light-emitting gun or other ejecting toy, look-alike, or imitation firearm having a opening in the muzzle end of the barrel to discharge such things as water, non-metallic projectiles, and light, a blaze orange (*Federal Standard 595–A, Jan. 1984, color no. 12199*) marking permanently affixed to the exterior surface of the barrel, covering the circumference of the barrel from the muzzel end for a depth of at least 6 millimeters.

(c) Construction of the device entirely of transparent or translucent materials which permit unmistakable observation of the device's complete contents.

(d) Coloration of the entire exterior surface of the device in bright red, bright orange, bright yellow, bright green, or bright blue, either singly or as the predominant color in combination with other colors in any pattern.

(e) Coloration of the entire exterior surface of the device predominantly in white in combination with one or more of the colors bright red, bright orange, bright yellow, bright green, or bright blue in any pattern.

§ 1150.4 Waiver.

The prohibitions set forth in § 1150.2 are waived for any device that only will be used in the theatrical, movie, or television industries.

§ 1150.5 Preemption.

In accordance with section 4(g) of the Federal Energy Management Improvement Act of 1988 (15 U.S.C. 5001(g)), the provisions of that Act and of this part supersede any provisions of State or local laws or ordinances which provide for markings or identification inconsistent with the provisions of section 4 of that Act or of this part.

[FR Doc. 89–5675 Filed 3–13–89; 8:45 am]
BILLING CODE 3510–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–26598; File No. S7–8–89]

Reporting of Beneficial Ownership in Publicly-Held Companies

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Securities and Exchange Commission ("Commission") today is publishing for comment proposals to amend the rules relating to the reporting of beneficial ownership in publicly-held companies. The proposals are intended to improve the effectiveness of the beneficial ownership disclosure scheme, while at the same time reducing the reporting obligations of passive investors.

DATE: Comments should be received on or before May 15, 1989.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7–8–89. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: David A. Sirignano or Richard E. Baltz at (202) 272–3097, Office of Tender Offers, Division of Corporation Finance.

SUPPLEMENTARY INFORMATION: The Commission is proposing for comment amendments to Rules 13d–1,[1] 13d–2,[2] and 13d–7,[3] and Schedules 13D [4] and 13G.[5]

I. Executive Summary

The beneficial ownership reporting requirements embodied in sections 13(d) [6] and 13(g) [7] of the Securities Exchange Act of 1934 ("Exchange Act") [8] and the regulations adopted thereunder [9] are intended to provide to investors and to the subject issuer information about accumulations of securities that may have the ability to change or influence control of the issuer. The statutory and regulatory framework also establishes a comprehensive reporting system for gathering and disseminating information about the ownership of equity securities.

These provisions require, subject to exceptions, that any person who acquires more than five percent of a class of equity securities registered under section 12 of the Exchange Act [10] and other specified equity securities (collectively, "subject securities") [11] report such acquisition on Schedule 13D within 10 days. Persons holding more than five percent of a class of subject securities at the end of the calendar year, but not required to report on Schedule 13D, must file a short-form Schedule 13G within 45 days after December 31. These Schedule 13G filers include persons exempt from the

[1] 17 CFR 240.13d–1.
[2] 17 CFR 240.13d–2.
[3] 17 CFR 240.13d–7.
[4] 17 CFR 240.13d–101.
[5] 17 CFR 240.13d–102.
[6] 15 U.S.C. 78m(d).
[7] 15 U.S.C. 78m(g).
[8] 15 U.S.C. 78a *et seq.*
[9] Regulation 13D–G, Rule 13d–1 *et seq.* [17 CFR 240.13d–1 *et seq.*]
[10] 15 U.S.C. 78*l*.
[11] Acquisitions of equity securities that would have been registered under Section 12 except for the insurance company exemption in section 12(g)(2)(G) [15 U.S.C. 78*l*(g)(2)(G)], or that are issued by a closed-end investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 to 80a–52], also are subject to the beneficial ownership reporting requirements. In addition, if a person has the right to acquire beneficial ownership of a subject security within 60 days (A) through the exercise of any warrant, option, or right, (B) through the conversion of a security, (C) pursuant to the power to revoke a trust, discretionary account or similar arrangement, or (D) pursuant to the automatic termination of a trust, discretionary account, or similar arrangement, such person shall be deemed to be the beneficial owner of the subject securities which may be acquired through the exercise or conversion of such security or power. If a security or power specified by (A), (B), (C), or (D) is acquired with the purpose or effect of changing or influencing control or as a participant in a transaction having such a purpose or effect, the person is deemed a beneficial owner of the subject security immediately upon acquisition. Rule 13d–3(d)(1)(i) [17 CFR 240.13d–3(d)(1)(i)].

requirement of Section 13(d) [12] as well as specified institutional investors holding securities in the ordinary course of business and not with a control purpose.[13]

Based upon its experience in administering the beneficial ownership rules, the Commission is proposing changes to improve the meaningfulness to investors of filings on Schedule 13D, while at the same time reducing the reporting obligations of passive non-institutional investors, who would become entitled to use the short-form Schedule 13G instead of the Schedule 13D.[14] The Commission preliminarily believes that Schedule 13G provides adequate information when the filing person has a passive investment purpose—that is, when the acquisition is not for the purpose, and does not have the effect, of changing or influencing the control of the issuer, and the person is not participating in a transaction having such a purpose or effect.

The proposed amendments would alter the present beneficial ownership reporting scheme in a number of ways. In addition to the two current categories of Schedule 13G filers (institutional investors and persons reporting exempt acquisitions), a third category (passive non-institutional investors) would be created, significantly expanding the classes of persons eligible to file on the short-form. An institutional investor would continue to be able to file a short-form report on Schedule 13G 45 days after the year's end, provided that the requirements of current Rule 13d–1(b)(1) are satisfied and the institutional investor's beneficial ownership does not equal or exceed 20 percent of the class at any time. Any other person who acquires or holds, with a passive investment purpose, more than five percent (but not 20 percent or more) of a class of subject securities also would be permitted to file a short-form report on Schedule 13G, rather than the long-form report on Schedule 13D currently required for most investors, within 10 days after the acquisiton. Exempt acquisitions also would be reported on Schedule 13G within a 10-day period but would not be subject to the 20 percent or more limitation.

Both institutional and non-institutional Schedule 13G filers that determined that they could no longer make the passive investment purpose certification would be required to file a Schedule 13D within 10 days of a change in purpose. A non-exempt acquisition causing any person, including an institutional investor, to own beneficially 20 percent or more of a class of subject securities also would disqualify that person from filing on Schedule 13G and trigger a requirement for a Schedule 13D filing within 10 days. An investor required to file a Schedule 13D because it either had changed its investment purpose or acquired 20 percent or more of a class of subject securities would be subject to a waiting period ("cooling-off period") during which such person could not vote or direct the voting of the subject securities, or acquire an additional beneficial ownership interest in any securities either of the issuer or of any person controlling the issuer. An investor required to file a Schedule 13D because it acquired 20 percent or more of a class of subject securities would be subject to a cooling-off period only until the filing of a Schedule 13D. However, an investor that must file a Schedule 13D because of a change in investment purpose would be subject to a cooling-off period from the time of the change in investment intent until the expiration of the tenth day from the date of the filing of a Schedule 13D. The current cooling-off period applicable only to institutional investors [15] would not be retained.

As is required currently, amendments to disclose any other changes in the information reported on Schedule 13G would be required only on an annual basis,[16] so long as beneficial ownership does not exceed 10 percent of the class of subject securities, calculated at the end of the month when that ownership level is reached.[17]

A chart summarizing the current reporting obligations and the effects of the proposed rule amendments appears below in Part III.F.

Finally, the Commission is proposing technical amendments to the beneficial ownership rules. First, the proposed amendments would require that a copy of a Schedule 13D or 13G, or amendments thereto, filed with respect to holdings of a class of securities quoted on the National Association of Securities Dealers Automated Quotation System ("NASDAQ") be provided to the National Association of Securities Dealers, Inc. ("NASD") to parallel the requirements for exchange-traded securities. Second, proposed amendments to Rule 13d–1(c) would delete as no longer necessary the grandfather provisions adopted in 1978. Additional related and clarifying amendments also are proposed.

II. Background

As part of the Williams Act Amendments of 1968,[18] Congress added section 13(d) to the Exchange Act to require any person (or group of persons) who, as a result of an acquisiton, becomes the beneficial owner of more than five percent of a class of equity securities registered under section 12 of the Exchange Act or other subject securities [19] to send to the issuer of the security and to each exchange on which the security is traded and to file with the Commission a report disclosing the acquistion and other information about the acquiror and its plans or proposals within 10 days after the acquisition. Section 13(d) was intended to provide information to the public and the subject company about accumulations of its equity securities in the hands of persons who then would have the potential to change or influence control of the issuer.[20]

Certain types of acquisitions unrelated to a potential change or influence of control are exempt from

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[12] This category consists of persons filing on Schedule 13G because their acquisitions are statutorily or administratively exempt (collectively, "exempt acquisitions") from reporting on Schedule 13D. *See* Part II for a summary of the exempt acquisitions.

[13] Such persons include a broker or dealer registered under section 15(b) of the Exchange Act [15 U.S.C. 78*o*(b)], a bank as defined in section 3(a)(6) of the Exchange Act [15 U.S.C. 78c(a)(6)], an insurance company as defined in Section 3(a)(9) of the Exchange Act [15 U.S.C. 78c(a)(9)], an investment company registered under Section 8 of the Investment Company Act of 1940 [15 U.S.C. 80a–8], an investment adviser registered under section 203 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 *et seq.*], an employee benefit plan or pension fund that is subject to the provisions of Employee Retirement Income Security Act [codified principally in 29 U.S.C. 1001–1461], and related holding companies and groups (collectively, "institutional investors"). Rule 13d–1(b)(1)(ii) [17 CFR 240.13d–1(b)(ii)].

[14] The Commission also has recommended to Congress that the period for filing an initial beneficial ownership report be reduced from ten days to five business days and that the filing person be prohibited from acquiring additional securities until the filing is made with the Commission. In addition, the Commission has endorsed the imposition of civil penalties for violations of section 13(d). *See* Statement of David S. Ruder, Chairman of the Securities and Exchange Commission, Before the House Subcommittee on Telecommunications and Finance, September 17, 1987, and Statement of Charles C. Cox, Acting Chairman of the Securities and Exchange Commission, Before the Senate Committee on Banking, Housing and Urban Affairs, June 23, 1987.

[15] Rule 13d–1(b)(3)(ii) [17 CFR 240.13d–1(b)(3)(ii)].

[16] Rule 13d–2(b) [17 CFR 240.13d–2(b)].

[17] Rule 13d–1(b)(2) [17 CFR 240.13d–1(b)(2)]. Under the proposal, this provision would apply to both institutional and non-institutional investors, but not to persons reporting exempt acquisitions.

[18] Pub. L. 90–439, 82 Stat. 454, 15 U.S.C. 78m(d), 78m(e), 78n(d), 78n(e) and 78n(f).

[19] *See* n. 11 *supra*.

[20] S. Rep. No. 550, 90th Cong., 1st Sess. 7 (1967); H.R. Rep. No. 1711, 90th Cong., 2nd Sess. 8 (1968); and Hearings on S. 510 before the Subcomm. on Securities of the Senate Comm. on Banking and Currency, 90th Cong., 1st Sess. (1967).

reporting by statute, regulation and Commission interpretation. Thus, persons who acquire not more than two percent of a class of subject sercurities within a 12-month period are exempted by Section 13(d)(6)(B).[21] Section 13(d)(6)(C) [22] exempts from reporting acquisitions by the issuer of its own securities. Section 13(d)(6)(A) [23] exempts from reporting acquisitions of subject securities acquired in a stock-for-stock exchange which is registered under the Securities Act of 1933,[24] because Congress believed at that time that shareholders of the issuer would, through the receipt of a prospectus, receive all material information necessary to make an informed decision whether to hold stock or exchange it for the stock of the company making the exchange offer.[25] Section 13(d)(6)(D) [26] empowers the Commission to exempt other acquisitions or proposed acquisitions not entered into with a purpose or effect of changing or influencing control of the issuer. The Commission has used this authority to permit institutional investors acquiring securities in the ordinary course of business to file a short-form Schedule 13G.[27]

The beneficial ownership reporting provisions apply only to acquisitions of voting securities.[28] Because of the reduction in the reporting threshold, persons who acquire more than five percent, but less than 10 percent, or a subject security before January 1, 1970, also are not required to file a Schedule 13D.[29] In addition, the Commission has expressed the view that section 13(d) does not apply to acquisitions occurring before the securities are registered pursuant to section 12 of the Exchange Act.[30]

The exemptions created gaps in the beneficial ownership reporting scheme permitting persons to own more than five percent of a class of subject securities without reporting such ownership. In 1977, Congress enacted section 13(g) of the Exchange Act [31] to provide for a comprehensive system of disclosure of ownership interests.[32] Section 13(g) requires any person who is directly or indirectly the beneficial owner or more than five percent of a class of subject securities at the end of the calendar year, except for the issuer of the securities, to send to the issuer and file with the Commission a statement of Schedule 13G. Section 13(g) was intended to improve disclosure to issuers and the marketplace and to "supplement [section 13(d)] by providing legislative authority for certain additional disclosure requirements that in some cases could not be imposed administratively." [33] On the face, section 13(g) woudld require a filing regardless of whether a person was required to report ownership under other sections of the Exchange Act; however, the Commission was directed "to take such steps as are necessary and appropriate in the public interest to achieve centralized reporting of the information, to avoid unnecessary duplicative reporting, and to minimize the compliance burden on persons required to report." [34]

Pursuant to its rulemaking authority under sections 13(d) and 13(g), the Commission adopted a comprehensive system of beneficial ownership reporting. Unless otherwise exempt, all persons acquiring more than five percent of a class of voting subject securities must file a Schedule 13D with the Commission within 10 days of the acquisition disclosing in detail information concerning the purchaser, the purpose of the acquisition and any plans or proposals of the purchaser for the issuer.[35] The Schedule 13D must be amended promptly to disclose any material changes in the information reported.[36]

Pursuant to section 13(g), the Commission adopted a short-term beneficial ownership report. This report must be filed by holders of mroe than five percent of a class of equity securities who are exempt from filing a Schedule 13D.[37] Schedule 13G requires disclosure of such person's identity, residence, citizenship, and the number and description of the shares in which such person has an interest, including the nature of such interest. The Schedule 13G must be filed within 45 days after the close of the calendar year and amended on an annual basis if the percentage of the class of subject securities beneficially owned as of December 31 remains more than five percent.[38]

In addition to persons reporting exempt acquisitions, institutional investors that can represent that the securities were acquired in the ordinary course of business and not with the purpose or effect of changing or influencing control of the issuer also may file a Schedule 13G rather than a Schedule 13D.[39] An institutional investor is permitted to amend on an annual basis, unless its beneficial ownership exceeds 10 percent of the outstanding securities, in which case an amendment must be filed within 10 days after the close of the first month in which the interest exceeds 10 percent, and thereafter within 10 days after the end of the month if a five percent change occurs, computed as of the last day of the month.[40] If such an institutional investor can no longer make the passive investment representation, if must file a Schedule 13D within 10 days and refrain from voting its securities or acquiring

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[21] 15 U.S.C. 78m(d)(6)(B).

[22] 15 U.S.C. 78m(d)(6)(C).

[23] 15 U.S.C. 78m(d)(6)(A).

[24] 15 U.S.C. 77a *et seq.*

[25] S. Rep. No. 550 at 3; H.R. Rep. No. 1711 at 3.

[26] 15 U.S.C. 78m(d)(6)(D).

[27] Release No. 34–14692 (April 28, 1978) [43 FR 18484].

[28] Rule 13d-1(d) [17 CFR 240.13d-1(d)].

[29] As originally enacted, the Williams Act required reporting by any person or group acquiring more than 10 percent of an equity security.The threshold was reduced to more than five percent in 1970. *See* Pub. L. No. 91–567, §§ 1, 2, 84 Stat. 1497.

[30] Release No. 34–15348 (November 29, 1978) [43 FR 55751, 55742]. Securities acquired before the effective date of the registration statement, however, are included in the calculation of the 2 percent exemption under section 13(d)(6)(B).

In addiiton, the staff has expressed the view that holdings by non-control persons of more than five percent resulting from a decrease in the outstanding number of shares also are not reportable. Because the person has not taken any action to increase its beneficial ownership, no acquisition has occurred for the purposes of Rule 13d-1(a). Acquisitons of additional securities are subject to the exemption in section 13(d)(6)(B). *See Harold Martin* (available October 4, 1979).

[31] 15 U.S.C. 78m(g).

[32] In addition, as part of the Securities Act Amendments of 1975, Congress enacted section 13(f) of the Exchange Act [15 U.S.C. 78m(f)] to create in the Commission a central depository of historical and current data about the investment activities of institutional investment managers and to facilitate consideration of the influence and impact of institutional investment managers on securities markets and the public policy implications of that influence. An institutional investor is subject to section 13(f) only if its exercises investment discretion with respect to securities having an aggregate fair market value of $100 million or more.

[33] S. Rep. No. 114, 95th Cong. 1st Sess. 13 (1977).

[34] *Id.*

[35] Rule 13d–1(a) [17 CFR 240.13d-1(a)].

[36] Rule 13d–2(a) [17 CFR 240.13d-2(a)].

The term "promptly" is not defined in Regulation 13D–G. In *In re Cooper Laboratories, Inc.*, Release 34–22171 (June 26, 1985) (Administrative Proceeding File No. 3–6536), the Commission expressed the veiw that "the promptness of an amendment to a Schedule 13D must be judged in light of all the facts and circumstances of a particular situation and [any] delay beyond the time of the amendment reasonably could have been filed may not be deemed to be prompt under the circumstances presented." The Commission determined that the amendment in that case should have been filed on the day following the change requiring an amendment. The respondent was required to comply with an undertaking to maintain in trust the profits received from the sale of the subject security to satisfy any claims by investors who sold prior to the filing of the amendment.

[37] *See* discussion *supra*, in text at nn. 21–30.

[38] Rule 13d–1(c) [17 CFR 240.13d–1(c)].

[39] *See* n. 13 *supra*. Rule 13d–1(b)(1) [17 CFR 240.13d–1(b)(1)].

[40] Rules 13d–2(b) [17 CFR 240.13d–2(b)] and 13d–1(b)(2) [17 CFR 240.13d–1 (b)(2)].

additional securities of the same class for 10 days following the filing of the Schedule 13D.[41]

III. Discussion of Proposals

The beneficial ownership reporting scheme is intended to inform the marketplace of acquisitions of a company's securities that could affect control. Under the legislative framework, both the occurrence of the acquisition and the purpose for which the acquiror is accumulating securities are deemed material disclosures. However, the current scheme requires most persons to file detailed disclosure reports regardless of investment purpose. As a result, the scheme may place an unnecessary reporting obligation on persons whose acquistions do not involve the concerns of the Williams Act.

The Commission is proposing amendments to Regulations 13D–G to make beneficial ownership disclosure more useful to investors, the marketplace and the Commission and to reduce significantly the requirements that the current reporting scheme imposes on persons with a passive investment purpose. These changes would enhance the comprehensive framework of disclosure contemplated by Congress. Since all non-institutional investors with a passive investment purpose could be the short-form Schedule 13G within 10 days of the triggering event, the mere filing of a Schedule 13D would serve to notify the marketplace of an acquisition by a person with a possible control intent. The reduced number of Schedule 13D filings would allow the marketplace, as well as the staff of the Commission, to focus more quickly on acquisitions involving a potential change in control.[42]

A. Expanding the Class of Persons Using Schedule 13G

The purposes underlying section 13(d) do not require the extensive disclosure currently elicited by Schedule 13D for investors whose acquisitions have a passive investment purpose. However, the vast majority of persons filing on Schedule 13D have such a passive intent, but are not eligible to use the abbreviated disclosure document, Schedule 13G. Data provided by the Commission's Office of Economic Analysis indicate that 74 percent of the Schedule 13D studied reported no intention to change control of the issuer at the time of the initial filing.[43] Further, only 10 percent of these persons amended their original intent disclosure from "investment" to "change in control" over a two-year period following the date of the original filing.

The Commission is proposing that this significant pool of investors having solely a pasive investment purpose with respect to their ownership of more than five percent of a class of subject securities be permitted to file on Schedule 13G instead of Schedule 13D. Under the proposed amendments, Rules 13d–1(a) and 13d–2(a) would continue to require that persons who acquire beneficial ownership of more than five percent of the securities of the issuer file a Schedule 13D within 10 days after crossing the threshold and thereafter promptly amend that statement to disclose changes in ownership levels. Rule 13d–1(b)(1) would continue to permit an institutional investor acquiring subject securities in the ordinary course of its business to file a Schedule 13G within 45 days after the calendar year's end, provided that the conditions of the rule are satisfied. Proposed Rule 13d–(b)(2) also would permit any other investor, institutional or non-institutional, that acquires or holds more than five percent of a class of subject securities with a passive investment purpose to use a Schedule 13G in lieu of a Schedule 13D.[44]

A person with a passive investment purpose filing on Schedule 13G would have to disclose general information about its identity, residence and citizenship, and a description of the nature of the interest in the subject securities. Unlike the Schedule 13D, the Schedule 13G does not require disclosure of the source and amount of funds used or to be used for the acquisition; the purpose for which the acquisition was made; all transactions in the subject securities for the past 60 day; or contracts or arrangements with respect to the subject securities. With the extension of Schedule 13G to non-professional investors, the passive investment purpose certification would be revised to make the "ordinary course of business" requirement inapplicable to such persons.

Persons that cannot certify solely a passive investment purpose because of the current possibility that they may seek to exercise or influence control as an alternative investment purpose would be required to file on a Schedule 13D and would not be eligible to use a Schedule 13G. In essence, the proposed reporting system would divide persons with beneficial ownership of more than five and less than 20 percent of subject securities into two groups—those persons with a passive investment purpose permitted to file on Schedule 13G, and all other persons required to file on Schedule 13D.[45]

The current requirement that an institutional investor must certify that the subject securities were acquired in the ordinary course of business, as well as with a passive investment purpose, would be retained. The Commission requests comment, however, on whether the current form of the certification, requiring that the securities be acquired in the ordinary course of business,[46] as a prerequisite to filing 45 days after the calendar year's end, should be retained, if the institutional investor acquires the subject securities with a passive investment purpose. The proposed amendments would eliminate the requirement that an institutional investor that ceases to satisfy the conditions of current Rule 13d–1(b)(1)(ii) file a Schedule 13D. Like any person with a passive investment purpose, such a person would be permitted to file an initial or amended Schedule 13G within 10 days.

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[41] Rule 13d–1(b)(3)(i), (ii) [17 CFR 240.13d–1(b)(3)(i), (ii)].

[42] In fiscal year 1988, 2,850 original Schedules 13D and 6,927 amendments were filed with the Commission.

[43] The results of this sample of 100 Schedules 13D filed in calendar year 1985 were comparable to those derived from an earlier study of 200 filings of Schedule 13D from fiscal year 1981.

[44] Individuals controlling eligible institutions are the indirect beneficial owners of securities held by the institutions and thus have an obligation under section 13(d) and Rule 13d–1 to report those holdings. *See In re The Gabelli Group, Inc.*, Release No. 34–26005 (August 17, 1988). The staff has permitted individuals to file Schedules 13G jointly under Rule 13d–1(f) with an institution within their control where the individual owns directly, or indirectly through an ineligible entity, less than one percent of the company's stock and does not intend to change or influence contol of the company. *See Warren E. Buffet and Berkshire Hathaway, Inc.* (available December 5, 1988). To meet this obligation, the individual signs a separate Schedule 13G cover sheet and signs the Schedule in his individual capacity. *See* Schedule 13G, Instruction (1) and Notes for Cover Page and Item 10; 17 CFR 240.13d–102.

While the proposed amendments would remove any obstacle to the individual reporting beneficial ownership on a Schedule 13G with respect to passive investments, because of the timing differnce in the filing of the Schedule by individuals and eligible institutions, the staff will continue its no-action position to allow the control person to report indirect beneficial ownership through the controlled entity 45 days after the end of the calendar year, rather than 10 days after the person's indirect beneficial ownership exceeds five percent.

[45] The only exception would be Schedules 13G filed with respect to exempt acquisitions pursuant to current Rule 13d–1(c) (proposed to be retained with some modifications as discussed below). Such schedules would not include a certification of the filer's passive investment purpose.

[46] Item 10, Schedule 13G.

The Commission requests public comment on whether the use of Schedule 13G for passive investors should be mandatory, rather than voluntary as in the current rule proposal. Specifically, comment is solicited on whether the purposes of the proposed rules adequately would separate persons with a passive investment purpose from those with a possible control intent or whether a sufficient number of persons with a passive intent would choose to forego the lesser burdens of a Schedule 13G filing and file a Schedule 13D. Passive investors may choose to file on Schedule 13D because of the cooling-off period that accompanies the use of Schedule 13G. Use of Schedule 13D by passive investors could undermine the effectiveness of the schedules as a means to delineate between filers with a passive investment purpose and those with the intent to change or influence control. Comment also is requested on whether the currently permissive filing of Schedules 13G under Rule 13d–1(b)(1) by institutional investors acquiring or holding subject securities in the ordinary course of business should be made mandatory.

B. Ten Day Initial Filing Obligation for Non-institutional Beneficial Owners of More Than Five Percent; Timing for Amendments

Under the current reporting system, a Schedule 13D must be filed within 10 days after acquiring more than five percent of a subject security. In contrast, a Schedule 13G need not be filed until 45 days after the end of the calendar year in which the filing obligation arose, if beneficial ownership is more than five percent at the year's end. Except for an institutional investor acquiring the subject securities in the ordinary course of its business, the proposed amendments would require that any person filing a Schedule 13G, including a filing reflecting an exempt acquisition, file within 10 days of the triggering event.[47] Thus, the market and shareholders would receive more timely notice of the creation and existence of voting blocks that have the potential of affecting control of the issuer. Obtaining the short-form information more promptly is important even when the investment purpose is passive, because the existence of a large block of securities has control implications, regardless of the intentions of the current holder of the block.

As is currently required for an institutional investor, a non-institutional investor would file a Schedule 13G or amendment thereto within 10 days after the end of the first month in which such person's direct or indirect beneficical ownership exceed 10 percent of the class of subject securities, and thereafter within 10 days after the end of the month in which such person's beneficial ownership increases or decreases by more than five percent since the previous filing. Amendments to disclose any other changes would continue to be required only on an annual basis.

Institutional investors acquiring subject securities in the ordinary course of business would continue to file the Schedule 13G 45 days after the end of the calendar year to report holdings of more than five percent as of December 31. This distinction has been maintained due to the substantial number of positions reported by institutional investors on Schedule 13G.[48] Changes in the beneficial ownership reporting requirements for institutional investors could impose a substantial financial and operational burden.

Although the Commission does not propose to accelerate the filing date of the Schedule 13G for institutional investors, the experience of recent years has made clear that control is affected not only by a beneficial owner's own intentions of directly affecting control of an issuer, but also the use to which the acquiror may lend its voting power, or the intent of a person to whom it may sell the block. The concentration of voting power in a single block and its transferability are material information to the market. Furthermore, recent enforcement actions have provided examples of the use of illegal parking of securities involving market professionals to avoid, among other legal requirements, Schedule 13D disclosures and obligations under the Hart-Scott-Rodino Act.[49]

To obtain disclosure about institutional holdings that could play a role in a control contest, the Commission could require that institutional investors file Schedule 13G on a 10-day, monthly or quarterly basis, and/or require the reporting of all five percent positions, not just those in existence at the end of the relevant period. The Commission requests specific comment on the effect requiring institutional investors to file on a more timely basis would have on block positioning and marketmaking for a particular security. The Commission is concerned about the potential disruptive effect of an accelerated reporting obligation on the legitimate, day-to-day business operations of institutional investors—particularly with respect to market makers—as well as their ability, on a cost-effective basis, to comply with increased reporting requirements. Data are requested on the frequency with which broker-dealers or other market professionals hold more than five percent positions that are not required to be reported at the calendar year's end. The Commission also requests information as to the nature of additional procedures that would be necessary to monitor for these positions and the associated costs of such procedures.

C. Filing of Schedule 13D and Cooling-Off Period for Changes in Investment Intent

Under the current rules, institutional investors who have filed a Schedule 13G but who can no longer make ordinary course of business and passive investment representations must file a Schedule 13D "promptly," but no later than 10 days after a change in their investment purpose.[50] After filing the Schedule 13D, the institutional investor is prohibited from acquiring additional securites of the subject class or of a person controlling the issuer of the class, or voting the securities already owned for a period of 10 days.[51]

The proposed rule would extend the concept of a cooling-off period to any passive investor filing on Schedule 13G (except for those with only exempt acquisitions) that determines that it no longer holds the subject securities with a passive investment purpose. As proposed, the cooling-off period for a change in investment purpose would begin to run from the time of the determination of the change in investment intent until the expiration of the tenth day from the date of the filing of a Schedule 13D. A Schedule 13D would be required no later than 10 days after a change in investment purpose. The proposed rule would delete the reference to "promptly" [52] and require

[47] Proposed Rules 13d–1 (b)(2) and (c).

[48] Approximately 3,700 initial Schedules 13G and 5,990 amendments were filed in fiscal year 1987. Data from Schedules 13G with a reporting date of December 31, 1987 indicate that at least half of the filings were made by a broker or dealer, bank, insurance company, investment company, investment adviser or employee benefit plan.

[49] 15 U.S.C. 18a.

See e.g., SEC v. *First City Financial*, 688 F. Supp. 705 (D.D.C. 1988); *SEC* v. *Boyd L. Jefferies, et al.*, Lit. Rel. No. 11370 (March 19, 1987).

[50] Rule 13d–1(b)(3)(i) [17 CFR 240.13d–1(b)(3)(i)].

[51] Rule 13d–1(b)(3)(ii) [17 CFR 240.13d–1(b)(3)(ii)].

[52] The deletion of the word "promptly" from current Rule 13d–3 [17 CFR 240.13d–3] should eliminate any possible misperception that "promptly," in the context of a Regulation 13D–G filing, would be satisfied by a 10-day filing. *See* n. 36, *supra*.

the filing of a Schedule 13D within 10 days to parallel the original Schedule 13D filing obligation.

The proposed cooling-off period is necesssary and appropriate when the beneficial owner determines that it no longer holds the securities with a passive investment purpose and may seek to influence control The proposed approach would encourage the prompt filing of a Schedule 13D and prevent further acquisitions or the voting of the subject securities until the market and investors have been given time to react to the information in the Schedule 13D filing. The extension of a cooling-off period until ten days from the date of the required filing on Schedule 13D also would serve as a deterrent to the improper use of the Schedule 13G by persons seeking to influence control.

Comment is requested on whether the ten day period is necessary at all, or whether the period should be changed to a shorter period, such as three or five business days, or a longer period, such as fifteen days. Further, the Commission requests comment on whether such a provision would adequately discourage the improper use of a Schedule 13G by persons that may seek to influence control.

D. Limit on Ownership Interest Reportable on Schedule 13G and Cooling-off Period

Proposed Rule 13d–1(b)(1) would include a provision restricting the use of Schedule 13G (except for exempt acquisitions) by limiting the aggregate amount of securities that could be reported on that Schedule. The Commission is proposing to use a 20 percent threshold to balance the increased reporting burden and the need to provide detailed information about acquisitions that have significant control implications because of the size of the holdings.[53] As with the case of a change in passive investment purpose, acquisitions causing a person beneficially to own 20 percent or more of the class would require the holder to file a Schedule 13D within 10 days after the acquisition and subject the filer to a cooling-off period. Unlike the comparable cooling-off period for changes in investment intent, the cooling-off period only would run from the time the threshold is reached until the filing of the Schedule 13D.

The Commission requests comment on whether a 20 percent threshold level of stock ownership is the appropriate threshold at which to require persons with a purported passive investment purpose to report on Schedule 13D. At some level, a block of securities has inherent control implications because of its size and its potential for movement. The market and investors should receive notice of the block's existence and the information elicited by Schedule 13D, as well as prompt amendment to that information, including changes in the block's size. Commentators should address whether a 10 percent threshold, paralleling current requirements for amendment of a Schedule 13G and the 10 percent threshold for reporting under section 16,[54] is more appropriate, or whether a higher threshold should be adopted. Finally, the Commission requests comment on the appropriateness and length of the 10 day filing and cooling-off periods in this context. As discussed in Part III.C. above, the Commission also requests comment on when the cooling-off period should begin to run.

E. Related and Clarifying Amendments

The Commission also is proposing related amendments to the beneficial ownership reporting requirements. Amendments are proposed to current Rules 13d–1(b), 13d–2, 13d–7 and Schedules 13D and 13G.[55]

Current Regulation 13D–G requires the sending of the Schedule 13D and amendments to each exchange on which the security is traded. Schedules 13G and amendments, on the other hand, are only required to be sent to the principal exchange on which the securities is traded, if any. Since Schedule 13G would become the primary reporting document in many cases, the Commission proposes to require that a copy of each Schedule 13G and amendment be provided to each exchange on which the security is traded. Schedules 13G for exempt acquisitions, however, would continue to be sent only to the issuer at its principal executive offices and filed with the Commission, as provided by current Rule 13d–1(c). Amendments to Schedules 13G relating to exempt acquisitions would be treated similarly and no longer be required to be sent to an exchange, as is currently required by Rule 13d–2(b).

As a related matter, the Commission also proposes to require that a copy of a Schedule 13D, Schedule 13G or amendment filed to report ownership of a class of securities quoted on NASDAQ (except for those reflecting exempt acquisitions), and any amendments, be provided to the NASD.

Proposed amendments to Rule 13d–1(c) would delete as no longer necessary the grandfather provisions adopted in 1978 to facilitate the transition to reporting on Schedule 13G for persons whose holdings previously were not subject to any disclosure requirements. Persons with exempt acquisitions would continue to report beneficial ownership on Schedule 13G pursuant to revised Rule 13d–1(c).

The Commission also is proposing technical and clarifying amendments to Regulation 13D–G. Amendments to Rules 13d–1 and 13d–2 would make clear that a total of six copies (one signed original plus five copies) must be filed with the Commission under the current rules. Rule 13d–7 also would be revised to clarify that a Schedule 13D filed with respect to holdings reported until then on Schedule 13G, and vice versa, do not require an additional fee, if beneficial ownership had not fallen below five percent. In accordance with current staff interpretations, when a reporting person ceases to be eligible for Schedule 13G and must file a Schedule 13D, no new fee will be imposed. Similarly, if a 13D filer subsequently meets the criteria for use of Schedule 13G, no new fee will be imposed.

Technical amendments also are proposed to Schedules 13D and 13G to conform the schedules to the revised rules and amend the filing deadlines and the number of copies in the instructions.

[53] The amended rule is not intended to create a presumption that a person beneficially owning 20 percent or more of a class of subject securities has control or an actual control purpose.

[54] 15 U.S.C. 78p.

[55] 17 CFR 240.13d–1(b), 13d–1(b)(1)(iii), 13d–(1)(c), 13d–2(b), 13d–3(d)(3), and 13d–5(b)(2)(i).

F. Effects of Proposed Amendments to Regulation 13D-G

Issue	Current schedule 13D	Proposed schedule 13D	Current schedule 13G	Proposed schedule 13G
Person filing	Any person acquiring more than five percent of an equity security. Rule 13d-1(a).	No change	*Institutional Investors*—Acquiring more than 5% of an equity security. Rule 13d-1(b). *Exempt Acquisitions*—Persons holding more than 5% of an equity security whose acquisitions are exempt from Section 13(d). Rule 13d-1(c).	*Institutional Investors*—No change, except that Schedule may not be used to report holdings of 20% or more. *Non-Institutional Investors*—Any person holding more than 5%, but not 20% or more, of an equity security with a passive investment purpose may file. Proposed Rules 13d-1(b)(2) and 13d-1(b)(4). *Exempt Acquisitions*—No change.
Initial filing	Within 10 days after the acquisition. Rule 13d-1(a).	No change	45 days after end of the calendar year in which the person becomes obligated to file. Rule 13d-1 (b) and (c).	*Institutional Investors*—No change. *Non-Institutional Investors and Exempt Acquisitions*—Within 10 days after the acquisition. Proposed Rule 13d-1(b)(2) and (c).
Purpose of acquisition	Disclose under Item 4—Purpose of the transaction.	No change	*Institutional Investors*—Requires certification that the securities were acquired in the ordinary course of business, were not acquired for the purpose of and do not have the effect of changing or influencing control of the issuer, and were not acquired in a transaction having such an effect. Schedule 13G, Item 10. Rule 13d-1(b). *Exempt Acquisitions*—No certification required.	*Institutional Investors*—Same certification. *Non-Institutional Investors*—Same certification as institutional investors *except that* acquisitions need not occur in ordinary course of business ("passive investment purpose"). Schedule 13G, Item 10. Proposed Rule 13d-1(b)(2) *Exempt Acquisitions*—No change.
Amendment	An amendment must be filed promptly to reflect any material change, including a change in investment intent. Rule 13d-2(a).	No change	*All filers*—45 days after the end of the calendar year to report any change in the information. Rule 13d-2(b). *Institutional Investors only*—Within 10 days after the end of the first month in which such person's ownership exceeds 10 percent of a class of equity securities, and thereafter within 10 days of the end of any month in which such person's beneficial ownership increases or decreases more than 5%, computed as of the end of the month. Rule 13d-1(b)(2).	*Institutional Investors*—No change. *Non-Institutional Investors*—Same as requirement for institutional investors. *Exempt Acquisitions*—No change.
Initial schedule 13D following filing on schedule 13G.	*Institutional Investors*—Promptly, but no later than 10 days after it ceases to be an eligible institution or determines that it no longer holds such securities in the ordinary course of business or with passive investment purpose. Rule 13d-1(b)(3). *Exempt Acquisitions*—Not subject to this requirement.	*Institutional and Non-Institutional Investors*—Schedule 13D would be required within 10 days if: (1) Any person's beneficial ownership of a class of security equals or exceeds 20 percent. Proposed Rule 13d-1(b)(4)(i) or Any person determines that it no longer has a passive investment purpose. Proposed 13d-1(b)(4)(ii). *Exempt Acquisitions*—No change.		

Issue	Current schedule 13D	Proposed schedule 13D	Current schedule 13G	Proposed schedule 13G
Cooling-off period	*Institutional Investors*—Not required except for the 10-day period after initial 13D following change of intent by an institutional investor reporting on Schedule 13F. *Exempt Acquisitions*—Not subject to this requirement.	*Institutional and Non-Institutional Investors*—From the time beneficial ownership equals or exceeds 20 percent of the class until the date of the required filing. Proposed Rule 13d-1(b)(4)(ii). From the time the person changes its investment purpose until the expiration of ten days from the date of filing. Proposed Rule 13d-1(b)(4)(ii). *Exempt Acquisitions*—No change.	Not applicable	Not applicable.

IV. Cost-Benefit Analysis

To evaluate the benefits and costs associated with the proposed amendments to Exchange Act Rules 13d–1, 13d–2, and 13d–7, Schedule 13D, and Schedule 13G, the Commission requests commentators to provide views and data as to the costs and benefits associated with amending the filing requirements for beneficial ownership statements. The ability to file a Schedule 13G instead of a Schedule 13D in specified circumstances should reduce costs for persons meeting the requirements. Persons currently eligible to use a Schedule 13G based on holdings of subject securities at the end of the calendar year may incur increased reporting and monitoring costs because acquisitions that cause a person to hold 20 percent or more of the subject securities would be reported on Schedule 13D.

V. Initial Regulatory Flexibility Analysis

The Initial Regulatory Flexibility Analysis concerns the proposed amendments to the Commission's beneficial ownership rules and related Schedules 13D and 13G. The analysis has been prepared by the Commission in accordance with 5 U.S.C. 604.

The analysis notes that the principal effect of the revisions will be to reduce the filing obligations and associated costs to a majority of persons required to report beneficial ownership under sections 13(d) and 13(g) of the Exchange Act. Although specified categories of investors may incur an increased reporting or monitoring obligation, the Commission does not believe that there will be a significant economic impact on a substantial number of small entities.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Richard E. Baltz in the Office of Tender Offers, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

VI. Request for Comments

Any interested persons wishing to submit written comments on the proposals, to suggest additional changes, or to submit comments on other matters that might have an impact on the proposals, are requested to do so. In addition to the specific inquiries made throughout this release, the Commission solicits comments on the usefulness of the proposed revisions to the Schedule 13D–G reporting scheme to reporting persons, registrants, and the marketplace at large.

The Commission also requests comment on whether the proposed rule, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a)(2) of the Exchange Act.[56]

The Commission also encourages the submission of written comments with respect to any aspect of the initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory flexibility analysis if the proposed rules are adopted.

Persons wishing to submit written comments should file three copies thereof with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7–8–89. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

[56] 15 U.S.C. 78w(a)(2).

VII. Statutory Basis and Text of Amendments

The amendments to Rules 13d–1, 13d–2 and 13d–7 and Schedules 13D and 13G are being proposed pursuant to the authority set forth in sections 3(b), 13 and 23 of the Securities Exchange Act of 1934.

List of Subjects in 17 CFR Part 240

Reporting and Recordkeeping requirements, Securities.

VIII. Text of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part, as follows:

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w) * * *

2. By amending § 240.13d–1 by revising paragraphs (a) and (b)(1) introductory text, redesignating paragraphs (b)(2), (b)(3), and (b)(4) as (b)(3), (b)(4), and (b)(5), adding a new paragraph (b)(2), revising newly redesignated (b)(3, (b)(4), and (b)(5) and paragraph (c) as follows:

§ 240.13d–1 Filing of Schedules 13D and 13G.

(a) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is specified in paragraph (d) of this section, is directly or indirectly the beneficial owner of more than five percent of such class shall, within 10 days after such acquisition, send to the issuer of the security at its principal executive office, by registered or certified mail, and to each exchange or automated inter-dealer quotation system where the security is traded or

authorized to be quoted, and file with the Commission, a statement containing the information required by Schedule 13D (§ 240.13d–101). A signed original plus five copies of the statement, including all exhibits, shall be filed with the Commission.

(b)(1) A person who would otherwise be obligated under paragraph (a) of this section to file a statement on Schedule 13D and is not directly or indirectly the beneficial owner of 20 percent or more of such class may, in lieu thereof, file with the Commission, within 45 days after the end of the calendar year in which such person became so obligated, a signed original plus five copies, including all exhibits, of a short form statement on Schedule 13G (§ 240.13d–102) and send one copy each of such schedule to the issuer of the security at its principal executive office, by registered or certified mail, and to each national securities exchange or automated inter-dealer quotation system where the security is traded or authorized to be quoted: *Provided*, That it shall not be necessary to file a Schedule 13G unless the percentage of the class of equity security specified in paragraph (d) of this section beneficially owned as of the end of the calendar year is more than five percent: *And provided further*, That:

* * * * *

(b)(2) A person who would otherwise be obligated under paragraph (a) of this section to file a statement on Schedule 13D, but (i) has not acquired such securities with any purpose, or with the effect of, changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to Rule 13d–3(b) (§ 240.13d–3(b)); (ii) is not a person specified in paragraph (b)(1) of this section; and (iii) is not directly or indirectly the beneficial owner of 20 percent or more of such class, may, in lieu thereof, file with the Commission, within 10 days after an acquisition described in paragraph (a) of this section, a signed original plus five copies, including all exhibits, of a short form statement on Schedule 13G (§ 240.13d–102) and send one copy each of such schedule to the issuer of the security at its principal executive office, by registered or certified mail, and to each national securities exchange or automated inter-dealer quotation system where the security is traded or authorized to be quoted.

(3) Any person relying on Rules 13d–1(b)(1), 13d–1(b)(2), or 13d–2(b) shall, in addition to filing any statements required thereunder, file a statement on Schedule 13G, or amendment thereto, within 10 days after the end of the first month in which such person's direct or indirect beneficial ownership exceeds 10 percent of a class of equity securities specified in paragraph (d) of this section, computed as of the last day of the month, and thereafter within 10 days after the end of any month in which such person's beneficial ownership of securities of such class, computed as of the last day of the month, increases or decreases by more than five percent of such class of equity securities. A signed original plus five copies of such statement, including all exhibits, shall be filed with the Commission and one copy each sent, by registered or certified mail, to the issuer of the security at its principal executive office and to each national securities exchange or automated inter-dealer quotation system where the security is traded or authorized to be quoted. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required by this paragraph (b)(3) unless the person thereafter becomes the beneficial owner of more than 10 percent of the class.

(4) Notwithstanding paragraphs (b)(1), (b)(2) and (b)(3) of this section and Rule 13d–2(b) (§ 240.13d–2(b)), a person that has reported that it is the beneficial owner of more than five percent of a class of equity securities in a statement on Schedule 13G pursuant to paragraph (b) (1), (2), or (3) of this section or is required to report such acquisition but has not yet filed the schedule, shall immediately become subject to Rules 13d–1(a) and 13d–2(a) and shall file a statement on Schedule 13D within 10 days if:

(i) Such person's beneficial ownership equals or exceeds 20 percent of a class of equity securities specified in Rule 13d–1(d). Form the time such person's beneficial ownership equals or exceeds 20 percent of a class of equity securities specified in Rule 13d–1(d) until the filing of a statement on Schedule 13D pursuant to this paragraph, such person shall not: (1) Vote or direct the voting of the securities described therein; or (2) acquire an additional beneficial ownership interest in any equity securities of the issuer of such securities, nor of any person controlling such issuer; or

(ii) such person (1) determines that it has acquired or hold such securities with a purpose or effect of changing or influencing control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to Rule 13d–3(b) (§ 240.13d–3(b)); and (2) is at that time the beneficial owner of more than five percent of a class of equity securities described in Rule 13d–1(d). From the time such person determines that it has acquired or holds such securities with a purpose or effect of changing or influencing control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect until the expiration of the tenth day from the date of the filing of a Schedule 13D pursuant to this section, such person shall not: (A) Vote or direct the voting of the securities described therein; or (B) acquire an additional beneficial ownership interest in any equity securities of the issuer of such securities, nor for any person controlling such issuer.

(5) Any person who has reported an acquisition of securities in a statement on Schedule 13G pursuant to paragraph (b)(1) or (b)(3) of this section and thereafter ceases to be a person specified in paragraph (b)(1)(ii) of this section shall immediately become subject to Rules 13d–(1) or (b)(2) (if such person satisfies the requirements specified in paragraph (b)(2)) and 13d–2 (a) or (b) and shall file, within 10 days thereafter, a statement on Schedule 13D or amendment to Schedule 13G, as specified, in the event such person is a beneficial owner at that time of more than five percent of the class of equity securities.

(c) Any person who is or becomes directly or indirectly the beneficial owner or more than five percent of any equity security of a class specified in paragraph (d) of this section and who is not required to file a statement under paragraph (a) of this section by virtue of the exemption provided by section 13(d)(6) (A) or (B) of the Act, or because such person otherwise (except for the examption provided by section 13(d)(6)(C) of the Act) is not required to file such a statement, shall within 10 days after becoming the beneficial owner, send to the issuer of the security at its principal executive office, by registered or certified mail, and file with the Commission a statement containing the information required by Schedule 13G (§ 240.13d–102). A signed original plus five copies of the statement, including all exhibits shall be filed with the Commission.

3. By amending § 240.13d–2 by revising paragraph (a), the second sentence of paragraph (b) and the note following paragraph (b) as follows:

§ 240.13d–2 Filing of amendments to Schedules 13D or 13G.

(a) Schedule 13D–If any material change occurs in the facts set forth in the statement required by Rule 13d–1(a) (§ 240.13d–1(a)), including, but not limited to, any material increase or decrease in the percentage of the class beneficially owned, the person or persons who were required to file such statement shall promptly file or cause to be filed with the Commission and send or cause to be sent to the issuer at its principal executive office, by registered or certified mail, and to each exchange or inter-dealer quotation system on which the security is traded or authorized to be quoted an amendment disclosing such change. An acquisition or disposition of beneficial ownership of securities in an amount equal to one percent or more of the class of securities shall be deemed "material" for purposes of this rule; acquisitions or dispositions of less than such amounts may be material, depending upon the facts and circumstances. A signed original plus five copies of each such amendment shall be filed with the Commission

(b) * * * A signed original plus five copies of such amendment, including all exhibits, shall be filed with the Commission and one each sent, by registered or certified mail, to the issuer of the security at its principal executive office and (except with respect to persons filing pursuant to 13d–1(c)) to each national securities exchange or inter-dealer quotation system where the security is traded or authorized to be quoted. * * *

Note.—For persons filing a short-form statement pursuant to Rule 13d–1(b) (1) or (2), see also rules 13d–1(b) (3), (4), and (5).

4. By amending § 240.13d–7 by revising the second sentence as follows:

§ 240.13d–7 Fees for Filing Schedules 13D or 13G

* * * No fees shall be required with respect to the filing of any amended Schedule 13D or 13G, and no fees shall be required with respect to an inital Schedule 13D or Schedule 13G if the filing person previously has filed a statement reporting beneficial ownership of more than five percent of such class of equity securities and has not subsequently filed an amendment reporting beneficial ownership of five percent or less of such class; *Provided, however,* That once an amendment has been filed reflecting beneficial ownership of five percent or less of such class, an additional fee of $100 shall be paid with the next filing of that person that reflects ownership of more than five percent.

5. By amending § 240.13d–101 by revising the language preceding the first box on the cover page, and revising the note on the cover page as follows:

§ 240.13d–101 Schedule 13D—Information to be included in statements filed pursuant to § 240.13d–1(a) and amendments thereto filed pursuant to § 240.13d–2(a).

If the filing has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d–1(b)(4)(i) (A) or (B), check the following box.

* * * * *

Note.—An original plus five copies of this statement, including all exhibits, should be filed with the Commission. See Rule 13d–1(a) for other parties to whom copies are to be sent.

* * * * *

6. By amending § 240.13d–102 by adding a line for the date of the reportable event following "(CUSIP Number)", revising Instruction A, revising Items 3, 4, and 10, and revising the note at the end of the schedule, as follows:

§ 240.13d–102 Schedule 13G—Information to be included in statements filed pursuant to § 240.13d–1(b) and (c) and amendments thereto filed pursuant to § 240.13d–1(b)(3) or § 240.13d–2(b).

* * * * *

(Date of Event Which Requires Filing of this Statement)

* * * * *

Instructions. A. Statements filed pursuant to Rule 13d–1(b)(1) containing the information required by this schedule shall be filed not later than February 14 following the calendar year in which the person became obligated to report or within the time specified in Rule 13d–1(b)(3), if applicable. Statements filed pursuant to Rule 13d–1(b) or 13d–1(c) shall be filed not later than 10 days after the event requiring the filing.

* * * * *

Item 3. If this statement is filed pursuant to Rule 13d–1(b)(1) or 13d–2(b), check whether the person filing is a:

(a) [ ] Broker or dealer registered under section 15 of the Act.

(b) [ ] Bank as defined in section 3(a)(6) of the Act.

(c) [ ] Insurance company as defined in section 3(a)(19) of the Act.

(d) [ ] Investment company registered under section 8 of the Investment Company Act.

(e) [ ] Investment adviser registered under section 203 of the Investment Advisers Act of 1940.

(f) [ ] Employee benefit plan, pension fund which is subject to the provisions of the Employee Retirement Income Security Act of 1974 or endowment fund; see § 240.13d–1(b)(1)(ii)(F).

(g) [ ] Parent holding company, in accordance with § 240.13d–1(b)(ii)(G).

In this statement is filed pursuant to Rule 13d–1(b)(2), check this box. _____

Item 4. Ownership.

Provide the following information regarding the aggregate number and percentage of the class of securities of the issuer identified in Item 1.

(a) Amount beneficially owned: _____.

(b) Percent of class: _____.

(c) Number of shares as to which such person has: _____.

(i) Sole power to vote or to direct the vote _____.

(ii) Shared person to vote or to direct the vote _____.

(iii) Sole power to dispose or to direct the disposition of _____.

(iv) Shared power to dispose or to direct the disposition of _____.

Instruction. For computations regarding securities which represent a right to acquire an underlying security *see* Rule 13d–3(d)(1).

* * * * *

Item 10. Certification.

(a) The following certification shall be included if the statement is filed pursuant to Rule 13d–1(b)(1): By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were acquired in the ordinary course of business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer of such securities and were not acquired in connection with or as a participant in any transaction having such purpose or effect.

(b) The following certification shall be included if the statement is filed pursuant to Rule 13d–1(b)(2):

By signing below I certify that, to the best of my knowledge and belief,the securities referred to above were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer of such securities and were not acquired in connection with or as a participant in any transaction having such purpose or effect.

* * * * *

Note.—A signed original plus five copies of this statement, including all exhibits, should be filed with the Commission.

* * * * *

By the Commission.

Jonathan G. Katz,

Secretary.

March 6, 1989.

[FR Doc. 89–5673 Filed 3–13–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

New Mexico Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of a proposed amendment to the New Mexico permanent regulatory programs (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is intended to revise the State program to provide additional safeguards for protection of the hydrologic balance.

This notice sets forth the times and locations that the New Mexico program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., m.s.t. on April 13, 1989. If requested, a public hearing on the proposed amendment will be held on April 10, 1989. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.s.t. on March 29, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Robert H. Hagen at the address listed below.

Copies of the New Mexico program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSMRE's Albuquerque Field Office.

Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102, Telephone: (505) 766–1486.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 "L" Street, NW., Washington, DC 20240, Telephone: (202) 343–5492.

New Mexico Energy & Minerals Department, Mining & Minerals Division, 525 Camino de los Marquez, Santa Fe, NM 87501, Telephone: (505) 827–5970.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Director, Albuquerque Field Office, at the address or telephone number listed in "ADDRESSES."

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86489). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.12, 931.13, 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated February 21, 1989, (Administrative Record No. NM–474), New Mexico submitted a proposed amendment to its program pursuant to SMCRA. New Mexico submitted the proposed amendment at its own initiative. New Mexico proposes to amend CSMC Rule 80–1–20–41(d)(1) that concerns the use of the best technology currently available to minimize impacts to the hydrologic balance.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the New Mexico program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Albuquerque Field Office may not be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m., m.s.t. on March 29, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Raymond L. Lowrie

Assistant Director, Western Field Operations.

Date: March 2, 1989.

[FR Doc. 89–5874 Filed 3–13–89; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–88–49]

Drawbridge Operation Regulations: Kissimmee River, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Florida Department of Transportation, the Coast Guard is considering a revocation of the regulations governing the State Road 78, 70 and 98 removable span bridges on the Kissimmee River at miles 0.5, 19.5 and 39.0 respectively to provide that the draws need not open. The proposal is being made because no requests have been made to open the draws since 1973. This action should relieve the bridge owner of the burden of responding to the existing requirements and having a person available to open the draws, while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before April 28, 1989.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, Brickell Plaza Federal Building, 909 SE. 1st Avenue, Miami, Florida 33131-3050. The comments and other materials referenced in this notice will be available for inspection and copying on the 4th Floor of the Brickell Plaza Federal Building, 909 SE. 1st Ave, Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky (305) 536-4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Proposed Regulations

There are 3 removable span highway bridges over the Kissimmee River in Okeechobee and Highlands County. The existing rule requires the bridge at Fort Bassinger, mile 39 to be opened upon 96 hours advance notice, while the bridges at Okeechobee at mile 0.5 and 19.5 require a 72 hour advance notification. These rules were enacted in the 1950's to allow for access by dredging equipment when the Kissimmee River was an active federal navigation project. Records do not reveal any reason for the difference in the notification requirements. The river is no longer an active federal navigation project, and none of the bridges have opened in the last 15 years due to lack of demand. Should traffic on the waterway change in the future, the District Commander may consider reinstituting specific opening requirements.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because of the lack of demand for openings. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

§ 117.295 [Amended]

2. Section 117.295 is amended by removing paragraphs (a) and (c) and redesignating paragraph (b) to (a).

Dated: March 1, 1989.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 89-5735 Filed 3-13-89; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 111

Acceptance of Mailpieces Bearing an Incorrect Date in the Meter or Mailer's Precancel Postmark

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal would change existing procedures concerning the acceptance of mailings bearing an incorrect date in the meter or mailer's precancel postmark. At present, certain postal regulations imply that mailings with an incorrect meter or precancel postmark date may be accepted only once, and that no additional incorrectly-dated mailings are to be accepted. Other more general postal regulations purport to give the entry post office discretion to accept repeated mailings of incorrectly-dated material. This proposal would provide, in general, that the first time incorrectly-dated mailings are found at the accepting post office the mailer would be notified, a record of the irregularity would be kept, but the mailing may be accepted. Any further incorrectly-dated mailings would be refused and the mailer would have to correct the error before they could be accepted.

Since the dated postmark is used both by the Postal Service and its customers to measure the length of time taken by the Postal Service to deliver a piece of mail, allowing customers to use an incorrect postmark date on their metered or precanceled mail leads to a distorted picture of postal performance. This proposal would, for the most part, remove incorrectly-dated meter or precanceled mail from the mailstream and thus make possible a more accurate representation of postal performance.

In addition, the date of mailing, as evidenced by a correct postmark date, is often used to determine whether a mailer has filed a legal paper or document, such as an income tax return, within the statutory period. A correct postmark date is also very important in other areas, such as in determining priority and eligibility in bidding on contracts, and in making payments within contractual deadlines.

DATES: Comments must be received on or before April 14, 1989.

ADDRESS: Address all comments to the Director, Office of Classification and Rates Administration, U.S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, DC 20260-5360. Copies of all written comments will be available for inspection between 9 a.m. and 4 p.m.,

Monday through Friday, in Room 8430, at the above address.

FOR FURTHER INFORMATION CONTACT: Leo F. Raymond, (202) 268–5199.

SUPPLEMENTARY INFORMATION: Existing postal regulations for First-Class Mail (other than that entered at the full single-piece rate) specify that, under limited circumstances, mailings may be accepted with an incorrect date in the meter or mailer's precancel postmark. By implication, those regulations prohibit acceptance of such mailings thereafter. (See section 374.22, Domestic Mail Manual.)

At the same time, other regulations, which address metered mailings in general, do not impose such a specific limitation. Rather, they direct postmasters to examine metered mailings for proper preparation, advise mailers of errors, including incorrect dates in the meter postmark, accept the mailing, and postmark the mail to show the proper date. After "repeated irregularities" in the date on metered mailpieces, postmasters are told they "may refuse to accept" such mailings, but the direction is neither specific nor mandatory in describing what actions to take. (See sections 144.53 and 144.54, Domestic Mail Manual.)

Mailers authorized to use a postage meter or precancel postmark must comply with the regulations for their use. This includes imprinting the correct date of mailing. Recipients of mail regularly base their opinions of both the sender and the Postal Service on what is represented by the date in the postmark. The acceptance of metered or precanceled mailpieces with incorrect dates removes any incentive for mailers to correct faulty dating practices which mislead the public regarding the actual date of mailing and the timeliness of delivery. Service measurements, both internally by postal personnel and externally by private interests, often rely on the postmark as the indicator of both when the mailpiece entered postal custody and when the clock began to run on meeting established service standards. Clearly, an erroneous date in the postmark skews service measurement and impedes a clear perception of postal performance. An erroneous postmark date may also lead to other adverse statutory or contractual consequences, as spelled out in greater detail in the summary.

In order to limit the circumstances in which incorrectly dated metered or mailer's precancel postmark pieces will be accepted, and do so uniformly for all such mail, the Postal Service proposes revisions to sections 144.53, 144.54 and 374.22, Domestic Mail Manual. The Post Service is also amending 144.471 to cross-reference the proposed new procedure in 144.54 and 374.22, and to remove an erroneous inference that postage on second-class mail may be paid by postage meter. See 462. Also, a new 144.476 is added, which picks up the last sentence of existing 144.471, and specifies where the $.00 meter impression must be placed.

Although exempt from the notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553 (b), (c) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. In Part 144, sections 144.471, 144.534, 144.541, 144.542 and 144.543 are revised, and section 144.476 is added.

PART 140—POSTAGE

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PART 144—POSTAGE METERS AND METER STAMPS

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144.4 Meter Stamps

* * * * *

144.47 Date of Mailing

144.471 The date shown in a meter postmark must be the actual date of deposit, except when the mailpiece is deposited after the last scheduled collection of the day; or as provided by 144.54 or 374.22. When deposit is made after the last scheduled collection of the day, mailers are encouraged but not required to use the date of the next scheduled collection.

* * * * *

144.476 A ".00" postage meter impression used to correct the date of metered mail must be placed on the nonaddress side of envelopes in the upper right hand corner, or adjacent to the postage meter stamp on flats or parcels. The date of the ".00" impression must be the actual date of deposit.

144.5 Mailings

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144.53 Handling

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144.534 Examination. a. Presorted Mail. Examine metered mail that is paid at a bulk or presorted rate according to the procedures in Handbook DM–102, *Bulk Mail Acceptance.* Whether detected during acceptance or after clearance for distribution, handle metered bulk or presort rate mail bearing an incorrect date in the postmark as provided by 144.54 or 374.22, as applicable.

b. Nonpresorted Mail. Examine nonpresorted metered mail to determine that it is properly prepared and bears a correct date in the meter postmark. This examination may be made by a selective check of pieces either awaiting or during distribution. Handle nonpresorted metered mail that is improperly prepared or does not bear a correct date in the meter postmark as provided by 144.54.

144.54. Mailing Irregularities

144.541 Presorted Mail with Presort Errors. Handle as directed by Handbook DM–102, *Bulk Mail Acceptance,* and 374.22, as applicable.

144.542 Incorrectly Dated Presorted Mail without Presort Errors. a. First Occurrence. On the first occurrence, the postmaster of the licensing office will use Form 3749, *Irregularities in the Preparation of Mail Matter,* to provide notice to the mailer whose metered mailing bears an incorrect date in the meter postmark. The postmaster may then accept the mailing (if other preparation requirements are met), but a permanent record of the irregularity must be maintained. The postmaster must postmark the mailpieces to apply the correct mailing date.

b. Subsequent Occurrences. If future mailings are improperly prepared or bear an incorrect date in the meter postmark (except as provided by 374.22), the mailing must not be accepted. The mailer must either reenvelope the mailpieces or apply a ".00" meter impression with the correct date before resubmitting the mail.

144.543 Nonpresorted Mail. a. First Occurrence. On the first occurrence, the postmaster of the licensing office will use Form 3749, *Irregularities in the Preparation of Mail Matter,* to provide notice to the mailer whose metered mailing is improperly prepared or bears an incorrect date in the meter postmark. The postmaster may then accept the mailing if other preparation requirements are met, but a permanent record of the irregularity must be

maintained. Cancel the incorrectly-dated pieces to show the correct date.

b. Subsequent Occurrences. If future mailings are improperly prepared or bear an incorrect date in the meter postmark (except as provided by 374.22), the mailing must not be accepted. The mailer must either reenvelope the mailpieces or apply a ".00" meter impression with the correct date before resubmitting the mail.

3. In Part 374, sections 374.221, 374.222 and 374.223 are revised.

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PART 370—MAILING

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PART 373—PRESORT VERIFICATION

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374.2 When a Carrier Route First-Class, Presorted First-Class, Nonpresorted ZIP + 4, ZIP + 4 Presort, or ZIP + 4 Barcoded Rate Mailing is Disqualified

* * * * *

374.22 Correction of Dates on Resubmitted Metered and Mailer's Precancel Postmark Mailpieces.

374.221 General. If a mailer elects to correct the presort or preparation problems in a mailing which had resulted in its disqualification when originally presented for acceptance, but is unable to resubmit that mailing on the same day, the date shown in the meter or mailer's precancel postmark must be corrected by reenveloping or applying a ".00" meter impression which includes the correct date of mailing.

374.222 Limited Exception to Correction of Date of Mailing. Subject to the following conditions, the postmaster of the office of mailing may waive the requirements of 374.221 *on a one-time-only basis.*

a. The presorted mailing with an incorrect date in the meter or mailer's precancel postmark is resubmitted on the day immediately following its initial presentation and disqualification; and

b. The mailing meets all other applicable requirements; and

c. (1) The initial presort or other preparation deficiencies resulted from mailing equipment problems beyond the mailer's control; or

(2) It represents the customer's first mailing at the carrier route First-Class, Presorted First-Class, nonpresorted ZIP + 4, ZIP + 4 Presort, or ZIP + 4 Barcoded rate, and the improper presort or preparation resulted from misinformation or misunderstanding of the applicable presort or preparation requirements.

Note: Nonpresorted mailings, full-rate mailings, and presorted mailings not being resubmitted after correction of presort or other preparation deficiencies, must be handled as provided by DMM 144.54 if they are improperly prepared or bear the incorrect date in the meter or mailer's precancel postmark.

374.223 Record of Waiver. If the postmaster accepts the mailing under the provisions of 374.222, a permanent record of the waiver must be maintained. Future mailings submitted with an incorrect date in the meter or mailer's precancel postmark cannot be accepted unless the mailer corrects the date by reenveloping or applying a ".00" meter impression which includes the correct date of mailing.

An appropriate amendment to 39 CFR 111.3 will be published if the proposal is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 89-5825 Filed 3-13-89; 8:45 pm]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3535-6]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA announces proposed disapproval of several revisions to the Illinois State Implementation Plan (SIP) for Ozone. These proposed SIP revisions would, if approved, provide extended compliance schedules for Getty Synthetic Fuels Incorporated (Getty), All Steel Incorporation (All Steel), St. Charles Manufacturing (St. Charles), National Can Corporation Clearing facility (National Can), American Can Englewood facility (American Can), and United States Can Company (U.S. Can). Getty, National Can, American Can, and U.S. Can are located in Cook County, Illinois. All Steel, and St. Charles are located in Kane County. These Counties are part of the Chicago ozone demonstration area. USEPA is today proposing to disapprove these revisions because the requested compliance date extension is inconsistent with relevant portions of the Clear Air Act and USEPA policy.

DATE: Comments on this revision and on the proposed USEPA action must be received by April 13, 1989.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886-6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26).

U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION:

Getty

On March 14, 1983, the Illinois Environmental Protection Agency (IEPA) submitted a proposed revision to its Ozone SIP for Getty's methane recovery unit at the C.I.D. landfill in Calumet City, which is located in the Chicago ozone demonstration area. This proposed revision is in the form of a February 10, 1983, Opinion and Order of the Illinois Pollution Control Board (IPCB) 81-171. It grants a variance from the existing SIP requirements until October 1, 1983, and provides a legally enforceable compliance schedule. Under the existing federally approved SIP, this methane recovery unit is subject to the control requirements contained in Rule 205 of Chapter 2 (Air Pollution) of the IPCB Rules and Regulations.[1] Compliance with IPCB Rule 205(f) was required by December 31, 1973, for existing sources and, therefore, compliance was required by Getty upon its start-up in 1981.

All Steel

On March 17, 1983, IEPA submitted a proposed revision to its Ozone SIP for

[1] The State has subsequently recodified its environmental regulations into the Illinois Administrative Code (IAC). However, because the IAC rules were never incorporated into the SIP, USEPA is rulemaking on these variances as though they were based on the underlying (i.e., before recodification) VOC regulations which are a part of the SIP.

several coating lines (1001–1006 and 1009) located in All Steel's Kane County, Illinois facility, which is in the Chicago ozone demonstration area. This proposed revision is in the form of a February 10, 1983, Opinion and Order of the IPCB, Number 82–110. It grants a variance from the existing SIP requirements until December 31, 1983, and provides a legally enforceable compliance schedule.

Under the existing federally approved SIP, each surface coating line is subject to the emission control requirements contained in Rule 205. IPCB 205(n)(1)(G) limits volatile organic compounds (VOC) emission to 3.0 pounds of VOC per gallon of coating, excluding water. Rule 205(j) stipulates that final compliance with Rule 205(n)(1)(G) is required by December 31, 1982.

St. Charles

On August 15, 1983, IEPA submitted a proposed revision to its ozone SIP for St. Charles' three spray paint booths and two bake ovens which are located in the Chicago ozone demonstration area. This proposed revision is in the form of a June 16, 1983, Opinion and Order of the IPCB, Number 82–156. It grants a variance from the existing SIP requirement until October 31, 1983.

Under the existing federally approved SIP, each metal coating operation at St. Charles is subject to the emission control requirements contained in Rule 205. IPCB Rule 205(n)(1)(G) limits VOC emissions from metal furniture coating operations to 3.0 pounds per gallon of coating (excluding water). Rule 205(j) stipulates that final compliance is required by December 31, 1982.

Getty, All Steel, and St. Charles History

In a March 20, 1984, **Federal Register** notice (49 FR 10277), USEPA proposed to disapprove the Getty, All Steel, and St. Charles proposed SIP revisions because the Illinois ozone SIP lacked an approvable attainment demonstration for the Chicago nonattainment area. The attainment demonstration contained in the State's 1982 ozone SIP was initially proposed for disapproval in the February 3, 1983, **Federal Register** notice (48 FR 5110). Subsequently, on August 15, 1984 (49 FR 5110), USEPA proposed to approve the State's revised 1982 SIP attainment demonstration and on July 14, 1987 (52 FR 26404) proposed to disapprove it again.

In an October 10, 1984, **Federal Register** notice (49 FR 39696), All-Steel was reproposed for approval; in a September 17, 1984, **Federal Register** notice (49 FR 36408), Getty was reproposed for approval; and in a September 17, 1984, **Federal Register** notice (49 FR 36407), St. Charles was reproposed for approval. During these 30-day public comment periods, USEPA received no comments. USEPA is today withdrawing the October 10, 1984, and the two September 17, 1984, proposals as they apply to the All-Steel, Getty, and St. Charles facilities and is reproposing to disapprove these SIP revisions as discussed in the Compliance Date Policy section of this notice.

National Can

On November 21, 1983, the IEPA submitted a proposed revision to its ozone SIP for National Can located in the Chicago ozone demonstration area. This proposed revision is in the form of an April 1, 1982, Opinion and Order of the IPCB, Number PCB 81–192. It grants a variance from the existing SIP requirements until December 31, 1983, and provides a legally enforceable compliance schedule.

Under the existing federally approved SIP, each can coating operation at National Can is subject to the emission control requirements contained in IPCB Rule 205(n)(1)(B). IPCB Rule 205(n)(1)(B) requires final compliance with established specific emission limitations for each of the can coating operations by November 31, 1982.

National Can History

In a July 5, 1984, **Federal Register** notice (49 FR 27583), USEPA proposed to approve the National Can proposed SIP revision. During the 30-day public comment period, USEPA received no comments. USEPA is today withdrawing the July 5, 1984, proposal as it applies to the National Can Clearing facility and is reproposing to disapprove this SIP revision as discussed in the policy section below.

American Can

On November 21, 1983, the IEPA submitted a proposed revision to its ozone SIP for American Can's Englewood facility located in Chicago, Cook County, Illinois. This proposed revision is in the form of a December 4, 1980,

Opinion and Order of the IPCB, Number PCB 80–169. It grants a variance from the existing SIP requirements until December 31, 1984, and provides a legally enforceable compliance schedule.

Under the existing federally approved SIP, each can coating operation at American Can Company is subject to the emission control requirements contained in IPCB Rule 205(n)(1)(B). IPCB Rule 205(n)(1)(B) requires compliance with established specific emission limitations for each of the can coating operations. Final compliance is required by December 31, 1982.

American Can History

In a June 15, 1984, **Federal Register** notice (49 FR 10277), USEPA proposed to approve American Can's proposed SIP revision. In this **Federal Register** notice USEPA stated that "USEPA will not take final action on this SIP revision until final rulemaking is completed on the ozone SIP for the Chicago area." During the 30-day public comment period. USEPA received no comments. USEPA is today withdrawing the June 15, 1984, proposal as it applies to the American Can Englewood facility and is reproposing to disapprove this SIP revision as discussed in the policy below.

U.S. Can

On January 24, 1985, the IEPA submitted a proposed revision to its ozone SIP for U.S. Can's manufacturing facility located in Elgin, Illinois. This SIP revision is in the form of a September 20, 1984, Opinion and Order of the IPCB, PCB 84–23. It grants U.S. Can a variance from the existing SIP requirements from December 31, 1982, until December 31, 1985, and provides a legally enforceable compliance program.

Under the existing federally approved SIP, each of U.S. Can's interior and exterior sheet coating operations and over varnish operations is subject to the 2.8 pounds of VOC per gallon emission limitation contained in IPCB Rule 205(n)(1)(B)(i) and (ii). Final compliance with this emission limitation is required by December 31, 1982.

The SIP revision for U.S. Can would allow additional time for the source to reformulate its coatings used in manufacturing cans for the general can market. USEPA is proposing to disapprove this revision as discussed below.

Compliance Date Extension Policy

USEPA may approve compliance date extensions if the State demonstrates that the compliance date meets the requirements of USEPA's policy on such extensions.

Under this policy any extension which goes beyond 3 years past adoption of the applicable rule should be closely scrutinized for expeditiousness. This should include an examination of the compliance status of other sources nationally in the same VOC category.

On March 10, 1982, USEPA issued guidance on extensions for can-coating operations. USEPA, thus, has provided the national survey for can-coating variances. Based on industry

experience, USEPA concluded that expeditiousness may be longer than three years for can coating operations. Expeditiousness is based upon the following guidance in the March 10, 1982, Federal Register notice (47 FR 10293). The policy states that USEPA will approve compliance date extensions for control of VOC emissions from can-coating operations in those cases where the extension will facilitate the expeditious conversion to low solvent technology. These extensions may be granted for a period up to December 31, 1985, where an expeditious, legally enforceable compliance program has been developed. The above can-coating extensions meet this requirement.

However, in addition, an approvable compliance date extension must be consistent with the reasonable further progress (RFP) requirements of the Clean Air Act and must not prevent the area from attaining the ozone national ambient air quality standard (NAAQS) by the area's attainment date. Illinois does not have an approved 1982 ozone plan for the Chicago attainment demonstration area. [2] Without an approvable demonstration USEPA cannot determine whether the individual compliance date extensions being proposed today will interfere with timely attainment and maintenance of the ozone standard, or with RFP. USEPA is, therefore, proposing to disapprove the above revisions. A more detailed discussion of the rationale for proposing disapproval of the State submission and of the Clean Air Act and USEPA policy related to compliance date extensions appears in Appendix A of USEPA's proposed rulemaking of November 8, 1988, at 53 FR 45103.

Summary

USEPA is reproposing to disapprove Getty, All Steel, St. Charles, National Can, American Can, and proposing to disapprove U.S. Can because (1) the State has failed to demonstrate that this revision will not interfere with attainment and maintenance of the ozone standard and, where relevant, RFP towards timely attainment with these revisions, and, therefore, the proposed revisions do not meet the requirements in the Clean Air Act and USEPA's policy on compliance date extensions and (2) these sources are all located in an area which lacks an approved ozone attainment demonstration.

USEPA is providing a 30-day comment period on this notice of proposed rulemaking. Public comments received on or before April 13, 1989 will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office listed at the front of this notice.

Any comments that were received during the March 20, 1984, public comment period must be resubmitted during the 30-day comment period of today's notice if the commentor still wishes USEPA to consider them. Otherwise, USEPA will not consider comments from the March 20, 1984, proposed rulemaking in its final rulemaking.

Under 5 U.S.C. 605(b), I certify that this SIP disapprovals will not have a significant economic impact on a substantial number of small entities because it only applies to six sources; Getty, All Steel, St. Charles, National Can, American Can and U.S. Can.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbon, Intergovernmental relations, Ozone.

Under Executive Order 12291, this action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Authority: 42 U.S.C. 7401–7642.

Dated: June 29, 1987.

Valdas V. Adamkus,

Regional Administrator.

Editorial note: This document was received at the Office of the Federal Register March 9, 1989.

[FR Doc. 89–5869 Filed 3–13–89; 8:45 pm]

BILLING CODE 6560–50–M

[2] In fact, on July 15, 1987 (52 FR 264.24), USEPA reproposed to disapprove Illinois 1982 ozone SIP for the Chicago attainment demonstration area because, *inter alia*, of the multiple and significant continuing violations of the ozone NAAQS monitored there. On October 17, 1988 (53 FR 40415), USEPA gave final disapproval of the Chicago portion of the SIP. It should also be noted that on May 26, 1988, USEPA notified the Governor of Illinois that the SIP for Chicago area is substantially inadequate to attain and maintain the ozone standard in the Chicago-Gary-Lake County Consolidated Metropolitan Statistical Area (CMSA), and called for a revision of the plan.

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40 CFR Part 52

[FRL–3535–8; KY–037]

Approval and Promulgation of Implementation Plans Kentucky: Stack Height Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a declaration by Kentucky that recent revisions to EPA's stock height regulations do not necessitate source-specific revisions to the State Implementation Plan (SIP) in this State. The State was required to review its SIP for consistency within nine months of final promulgation of the stack height regulations. The intended effect of this action is to formally document that Kentucky has satisfied their obligations under Section 406 of Pub. L. 95–95 to review their SIP with respect to EPA's revised stack height regulations. No emission limitations were affected by stack height credit above GEP or any other dispersion technique with the possible exception of the Ashland Oil, Inc., oil refinery in Catlettsburg. The analysis for this source will be done in a subsequent notice.

DATES: Comments must be received on or before April 13, 1989.

ADDRESSES: Comments may be mailed to Beverly T. Hudson of EPA Region IV's Air Programs Branch. (See EPA Region IV address below.) Copies of the submission and EPA's evaluation are available for public inspection during normal business hours at the following locations:

Air Programs Branch, Region IV, Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365

Kentucky Department for National Resources and Environmental Protection, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson, EPA Region IV Air Programs Branch, at the above listed address, telephone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by section 123 of the Clean Air Act (the Act). These regulations were challenged in the U.S. Court of Appeals for the DC Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club v. EPA*, 719 F. 2d 436. On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition (104 s. CT. 3571), and on July 18, 1984, the Court of Appeals formally issued a mandate

implementing its decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878), and finalized on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms, including "excessive concentration," "dispersion techniques," "nearby," and other important concepts, and modify some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2) of Pub. L. 95–95, all states were required to (1) review and revise, as necessary, their state implementation plans (SIP's) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credit above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIP's. All SIP revisions and revised emission limits were to be submitted to EPA within nine months of promulgation, as required by statute.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, state were to prepare inventories of stacks greater than 65 meters (m) in height and sources with emissions of sulfur dioxide (SO_2) in excess of 5.000 tons per year. These limits correspond to the *de minimis* GEP stack height and the *de minimis* SO_2 emission exemption from prohibited dispersion techniques. Sources were exempted from further review if they fell under the grandfathering clause (in existence before December 31, 1970), or if their actual height was less than the calculated (GEP) stack height. The remaining sources were then to be subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory. Kentucky has indicated that the documentation is available for review at the State office (listed above).

A summary of the State's findings is provided below.

Stack Height

Kentucky identified fifty-seven (57) stacks examined in the stack height review analysis. Of those stacks, forty-three (43) were greater than 65 meters and fifteen (15) stacks were less than 65 meters. Twenty-two (22) of the forty-three (43) stacks greater than 65 meters were grandfathered. Eleven stacks were reviewed for GEP formula height. The number of actual stacks which exceed GEP is four. Two of these stacks had to be remodeled at GEP. The other two stacks were previously modeled at GEP, and found to have acceptable emissions limits. The modeling techniques used in the demonstration supporting this revision are, for the most part, based on modeling guidance in place at the time that the analysis was performed, i.e., the EPA "Guideline on Air Quality Models" (1978). Since that time, revisions to modeling guidance have been promulgated by EPA (51 FR 32176, September 9, 1986 and 53 FR 392, January 6, 1988). Because the modeling analysis was under way prior to publication of the revised guidance, EPA accepts the analysis. The Ashland Oil Inc., oil refinery in Catlettsburg has eight stacks which have not been completely evaluated. The analysis for this source will be dealt with in a subsequent notice.

Dispersion Techniques

Six (6) sources were reviewed for other prohibited dispersion techniques. No sources were found that used a prohibited dispersion technique.

On January 22, 1988, the U.S. Court of appeals for the District of Columbia issued its decision in *NRDC* v. *Thomas*, 838 F.2d 1224 (DC Dir. 1988), regarding the Environmental Protection Agency's (EPA's) stack height regulations (50 FR 27892, July 8, 1985); the court upheld most of the rules, but certain provisions were remanded to the EPA for further consideration. Accordingly, EPA is not acting on two other Kentucky sources (identified in the TSD) because they currently receive credit under one of the remanded provisions. Kentucky and EPA will review these sources for compliance with any revised requirements when EPA completes rulemaking to respond to the NRDC remand.

The modeling review presents the results of Good Engineering Practice (GEP) Modeling for the determination of sulfur dioxide and total suspended particulate emissions from East Kentucky Power Cooperative (EKPC) Spurlock Units 1 and 2. Spurlock Units 1 and 2 were the sources that had to be modelled. This air quality impact assessment study was prepared using GEP stack heights for Units 1 and 2.

The results of this review indicate the modeled (ISCST) SO_2 and TSP emissions from Spurlock Units 1 and 2 at GEP stack heights comply with the NAAQS. This is based upon modeling the seven major sources within the 50 kilometer radius utilized in this study. Despite strong impacts influenced by emissions from Stuart Units 1–4, the modelling of the seven combined major sources indicates that SO_2 and TSP ambient concentrations comply with National Ambient Air Quality Standards.

Sources located within 50 km of the Spurlock facility and constructed after January 6, 1975, were considered in the Prevention of Significant Deterioration analysis (Spurlock Unit 2 and Killen Power Plant Unit 2 (Wrightsville, Ohio)).

EPA Review

EPA has reviewed Kentucky's submittal and concurs with the conclusion that no SIP revisions are necessary as a result of EPA's revised stack height regulations. Kentucky has therefore met its obligations under section 406 of Pub. L. 95–95, with the possible exception of Ashland Oil, Inc. The analysis for this source will be dealt with in a subsequent notice.

Today's action does not certify that Kentucky has complied with obligations under section 406 Pub. L. 95–95, for new sources, as required in 40 CFR 51.164 and 51.118. Those federal provisions contain the stack height requirements for all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. EPA is acting on Kentucky's submittals to comply with these requirements in a separate **Federal Register** notice.

EPA's detailed review and approval of the technical support submitted by the State is contained in a Technical Support Document. This document is available for public inspection at the EPA Regional Office listed in the **ADDRESSES** section of this notice. By publishing this proposed approval of the review and soliciting public comment, EPA is ensuring the opportunity for public participation in this process.

Proposed Action

EPA approves Kentucky's determination that no emission limitations have to be revised at this time, with the possible exception of Ashland Oil, Inc. Concerning Ashland Oil, Inc., which is not currently subject to the negative declaration and for which a review pursuant to section 406(d)(2) is still required, EPA is providing Kentucky with the following alternative methods to insure compliance with EPA's stack height regulations:

(1) Submittal, within the public comment period associated with this notice, of modeling analyses and other

technical support demonstrating compliance within the stack height regulations for the remaining sources; or

(2) Submittal, within the public comment period associated with this notice, of revised emission limitations as necessary to comply with the stack height regulations along with modelling analyses and other technical support; or

(3) Submittal, within the public comment period associated with this notice, of a schedule for final submittal of either (1) or (2) above.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7642.

Dated: March 3, 1989.

Lee A. DeHihns III,

Acting Regional Administrator.

[FR Doc. 89–5867 Filed 3–13–89; 8:45 am]

BILLING CODE 6560–50–M

LEGAL SERVICES CORPORATION

45 CFR Part 1632

Redistricting

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: The Legal Services Corporation ("LSC" or "Corporation") has as its principal national goal the provision of basic day-to-day legal services to eligible poor individuals. As part of the implementation of this goal, LSC proposes to prohibit any recipient involvement in redistricting activities, as defined in the rule, because redistricting activities are not related to the delivery of basic day-to-day legal services to the poor and are intertwined with impermissible political activity. The proposed rule is intended to ensure that recipients refrain from becoming involved in any redistricting activity, since such activity is not consistent with the Corporation's principal national goal for the provision of legal assistance.

DATE: Comments must be submitted on or before April 13, 1989.

ADDRESS: Send comments to Timothy B. Shea, General Counsel, Legal Services Corporation, 400 Virginia Avenue SW., Washington, DC 20024–2751.

FOR FURTHER INFORMATION CONTACT: Timothy B. Shea, (202) 863–1839.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2)(C) of the LSC Act requires the Corporation to establish goals for the provision of legal assistance. 42 U.S.C. 2996f(a)(2)(C). This section mandates that the Corporation ensure that recipients, "consistent with goals established by the Corporation," adopt procedures and implement local priorities for the provision of legal assistance, taking into account the relative needs of the eligible clients in the relevant service area. For the reasons set out here, redistricting activities are not consistent with the Corporation's goal that scarce resources be focused on meeting the basic day-to-day legal needs of eligible poor individuals.

Section 1007(a)(2)(C) of the Act requires that the Corporation ensure that its recipients, consistent with goals established by the Corporation, establish priorities for the provision of legal assistance. In setting such goals, the Congress specifically noted that the Corporation's establishment of national goals was "not intended to detract from the appropriate role of local programs" to consult local client communities. *See* H. Rep. No. 310, 95th Cong., 1st Sess. 11 (1977); *see also* S. Rep. No. 172, 95th Cong., 1st Sess. 13 (1977).

In the past, the Corporation has asserted this authority to establish national goals. *See, e.g.*, LSC Final Decision to Terminate Funding to San Juan Legal Services, Inc. (Apr. 26, 1979) at 3 (citing Recommended Decision of Hearing Examiner, wherein the basis for the termination of funding was in part due to a failure to undertake litigation having a significant impact on eligible clients, in contravention of LSC's then established goals). The purpose of national goals is to provide perimeters to individual recipients, who in turn can set local priorities within those perimeters. Historically, recipients have been accorded substantial discretion in determining the areas to which they will devote resources. *See* 45 CFR Part 1620.

For the following reasons, the Corporation has determined that redistricting activities are not in accord with the Corporation's goal of focusing scarce resources on the basic day-to-day legal needs of eligible poor individuals. First, redistricting cases are not peculiar to the interests of the poor, since the relief sought would affect entire communities, which are composed of poor and non-poor individuals. Second, redistricting cases have not been identified as a priority by LSC recipients. Third, recipient funds can be better used elsewhere, since alternative organizations are available to handle redistricting matters. Fourth, recipients would likely be competing with members of the private bar who handle matters such as these, since redistricting cases usually generate attorneys' fees. Finally, involvement in an activity that risks entanglement with political activities should be assiduously avoided by LSC recipients. The prohibition in this part is similar to that contained in section 6 of S. 2409 (1986), a bill introduced by Senators Hatch and Rudman to reauthorize the Legal Services Corporation. *See* 132 Cong. Rec. S5418 (1986).

Allocation of Resources. Redistricting is not peculiar to the interests of the poor because redistricting disputes usually involve entire communities, which include both poor and non-poor citizens. As the legislative history of the Act points out, the Corporation, in the establishment of national goals, is to ensure that the provision of legal assistance is made in the most effective manner and so as to have the greatest effect on the problems of the poor. Since the poor represent a minority, approximately 10 to 15 percent of the United States population, the group of eligible poor in most communities is relatively small. Since most redistricting cases are class actions, the putative plaintiff class often may consist of a majority of non-eligible individuals. Similarly, the relief sought in redistricting cases often would go to the non-poor. Even in redistricting cases involving discrimination issues, the relief sought would not always go primarily to eligible poor individuals, as only part of the protected minority may be eligible. Consequently, the expenditure of recipients' funds on redistricting activities would result in an allocation of resources for the benefit of non-eligible persons.

This rule is consistent with current priorities and practice requirements, since redistricting has not been identified as a priority by any LSC recipient. A compilation of the types of cases handled by LSC recipients in 1987 reveals that approximately 27 percent of the cases involved family matters, 21 percent involved housing matters, 18 percent involved income maintenance issues, and 12 percent were consumer related cases. *See* Legal Services Corporation 1987/1988 Fact Book at 46. However, the need for this rule is supported by the fact that, at other times, LSC recipients have committed substantial resources to redistricting

issues. As noted below, the Corporation estimates that more than 28,000 hours were devoted to handling redistricting cases from 1978 to 1984, years surrounding the 1980 census.

Alternative Resources. Redistricting activities are undertaken by numerous organizations, including the Mexican American Legal Defense Fund, the Southwest Voters Registration Project, Common Cause, the American Civil Liberties Union, the Native American Rights Fund, the NAACP, the Lawyers Committee for Civil Rights, the League of Women Voters, the Democratic National Committee, and the Republican National Committee. Consequently, there are other entities available to help aggrieved parties, poor and non-poor alike, who want to seek redress of any preceived malapportionment. Redistricting cases usually offer incentives to members of the private bar, since under the Voting Rights Act, 42 U.S.C. 1973, and the Civil Rights Attorneys' Fees Award Act of 1976, 42 U.S.C. 1981 and 1988, the right to recover attorneys' fees is specifically provided to prevailing parties.

Subject to Abuse. In the past, involvement in redistricting activities by legal services recipients has been subject to abuse because legal services recipients have linked redistricting activities to obtaining favorable Congressional support for their objectives. One LSC recipient's grant proposal addressed the need to become involved in State and local redistricting matters in order to develop powerful allies for their clients in what the recipient viewed as a battle over the direction of legal services programs. Influencing redistricting in State and local legislative bodies clearly affects the political character of those legislative bodies.

In response to the requests made on April 11 and May 10, 1984, by the Senate Committee on Labor and Human Resources, LSC conducted a study of its grantees to determine their involvement in legislative redistricting activities arising out of the 1980 census. As a result of two separate monitorings and 34 responses to an LSC questionnaire that was mailed to all LSC programs, LSC estimates that at least 28,182 hours were spent handling legislative redistricting cases. Specifically, the LSC study found that LSC recipients, in spite of one recipient's assertion that clients rarely come to the office contending they have been "malapportioned", had sought resources for specialized computer equipment and a computer specialist to draw new election district boundaries to the recipients' satisfaction. In addition, recipients hired lobbyists to work on reapportionment issues, yet had no documented request from an eligible client or elected official to undertake this activity. Further, recipients also orchestrated a State-wide effort of legal services programs to ensure elections of specific persons, who would in turn be used as powerful allies in anticipated battles over funding for legal services programs.

The LSC study also revealed that certain LSC recipients requested and received Federal funds from the Corporation to establish a Voting Rights Project center in connection with the 1980 census for the purpose of strengthening Mexican-American political power, yet had no request from an eligible client to do so. In addition, these recipients prepared a voting rights litigation manual that outlined how to select the "right" client for a redistricting battle and how to locate such a client. Since these redistricting activities were obviously conducted by legal services attorneys in pursuit of general policy goals (or even in their own self-interest), rather than in the vindication of individual clients' rights, it is clear that involvement in redistricting activity is subject to abuse and not consistent with the Corporation's principal national goal of providing basic day-to-day legal services to eligible poor individuals.

Risk of Undue Political Entanglement. The Legal Services Corporation Act declares that "to preserve its strength, the legal services program must be kept from the influence of or use by it of political pressures." 42 U.S.C. 2996. The LSC Act also specifically prohibits involvement in "any political activity." 42 U.S.C. 2996f(a)(6)(A). Involvement on the part of LSC recipients in redistricting activities is inherently political. The Supreme Court of the United States has held that "[p]olitics and political considerations are inseparable from redistricting and apportionment." *Gaffney* v. *Cummings*, 412 U.S. 735, 753 (1973).

In separate instances, LSC recipients were involved in reapportionment cases with counsel for the Democratic and Republican parties, respectively. *Upham* v. *Seamon*, 456 U.S. 37 (1982); *Thornburg* v. *Gingles*, 478 U.S. 30 (1986). The Corporation makes no finding as to whether LSC recipients have aligned themselves with a particular political party, but believes that any such alignment is impermissible under the Act, since it constitutes political activity.

Competing Political Theories or Philosophies. Redistricting activities seek political outcomes that are normally the product of the legislative process. Indeed, the Supreme Court has stated that courts "must defer to legislative judgments on reapportionment as much as possible." *Upham* v. *Seamon*, 456 U.S. 37, 39, *reh'g denied* 456 U.S. 938 (1982). LSC recipient involvement in such redistricting activities generally will cause program funds to be expended in support of one political philosophy, rather than another. In *Baker* v. *Carr*, 369 U.S. 186 (1962), Justice Frankfurter, in his dissent, stated "What is actually asked of the Court in this case is to choose among competing bases of representation—ultimately, really among competing theories of political philosophy—in order to establish an appropriate frame of government." *Id.* at 254.

Consequently, the Corporation finds that redistricting activities, as defined in this rule, are so unrelated to basic day-to-day needs of the eligible poor and so intertwined with impermissible political activity that the Corporation should not permit its recipients to be involved in such activities.

List of Subjects in 45 CFR Part 1632

Legal services.

For the reasons set out above, 45 CFR Chapter XVI is proposed to be amended by adding Part 1632 to read as follows:

PART 1632—REDISTRICTING

Sec.
1632.1 Purpose.
1632.2 Definitions.
1632.3 Prohibition.

Authority: 42 U.S.C. 2996f(a)(2)(C); 42 U.S.C. 2996f(a)(3); 42 U.S.C. 2996g(e) of the Legal Services Corporation Act.

§ 1632.1 Purpose.

This part is intended to ensure that funds available to recipients will be utilized to the maximum extent for the delivery of basic day-to-day legal services to eligible poor individuals. Involvement in redistricting activities does not constitute the provision of basic day-to-day legal services and is prohibited by this part.

§ 1632.3 Definitions.

(a) As used in this Part, "redistricting" means any effort, directly or indirectly, to participate in the revision or reapportionment of a legislative, judicial, or elective district at any level of government, including influencing the timing or manner of the taking of a census.

(b) As used in this part, "advocating or opposing any plan" means any effort, whether by request or otherwise, even if

of a neutral nature, to revise a legislative, judicial, or elective district at any level of government.

(c) As used in this part, "recipient" means any grantee or contractor receiving funds made available by the Corporation under sections 1006(a)(1) or 1006(a)(3) of the act. The term "recipient" includes subrecipient and employees of recipients and subrecipients.

§ 1632.3 Prohibition.

Neither the Corporation nor any recipient shall be involved in or contribute or make available any funds, personnel, or equipment for use in advocating or opposing any plan, proposal, or litigation intended to or having the effect of altering any redistricting at any level of government.

Date: March 9, 1989.

Timothy B. Shea,

General Counsel.

[FR Doc. 89-5827 Filed 3-13-89; 8:45 am]

BILLING CODE 7050-01-M

Notices

Federal Register
Vol. 54, No. 48
Tuesday, March 14, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

CHRISTOPHER COLUMBUS QUINCENTENARY JUBILEE COMMISSION

Meeting

AGENCY: Christopher Columbus Quincentenary Jubilee Commission.

ACTION: Notice of meeting.

SUMMARY: This notice announces a forthcoming meeting of the Christopher Columbus Quincentenary Jubilee Commission, a presidential commission established in 1984 (Pub. L. 98–375). The meeting will be held in Dallas, Texas and will be chaired by Commission Chairman John N. Goudie.

DATES: Friday, April 7, 1989 from 2:30 to 5:30 p.m. (Open). Saturday, April 8, 1989 from 8:30 a.m. to 10:00 a.m. (Closed); 10:00 a.m. to 1:00 p.m. (Open).

ADDRESSES: On April 7, 1989 from 2:30 to 5:30 p.m. at the Hotel Plaza of the Americas, Ballroom, Dallas, Texas. On April 8, 1989 from 8:30 a.m. to 1:00 p.m. at the Hotel Plaza of the Americas, Ballroom, Dallas, Texas.

FOR FURTHER INFORMATION CONTACT: Francisco J. Martinez-Alvarez (202) 632–1992.

SUPPLEMENTARY INFORMATION: The Commission will review proposals for endorsement submitted by interested individuals and organizations, hear presentations by the Dallas Quincentenary Committee, Santa Fe Committee, California 1992 Committee, and Colorado Quincentenary Commission.

Francisco J. Martinez-Alvarez,
Acting Director.

[FR Doc. 89–5819 Filed 3–13–89; 8:45 am]
BILLING CODE 6820–RB–M

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 90254–9054]

Commercial Information Product User Fees

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The U.S. and Foreign Commercial Service (US&FCS), U.S. Department of Commerce, is establishing user fee rates for its expanded Comparison Shopping Service (CSS).

EFFECTIVE DATE: March 14, 1989.

FOR FURTHER INFORMATION CONTACT: Raymond S. Yaukey, Marketing Analysis Division, Office of Commercial Information Management, Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. Telephone (202) 377–8972.

SUPPLEMENTARY INFORMATION: The Comparison Shopping Service provides a custom market survey for a U.S. firm's specific product in a selected country market. A CSS survey covers a single product in a single country market and answers basic questions relating to the marketability of the product, key competitors, comparative prices, customary distribution and promotion practices, trade barriers and other factors. The expanded Comparison Shopping Service is to take effect as of date of publication in **Federal Register** and the following new user fee schedule will take effect on this date.

User Fee Schedule For The Expanded Comparative Shopping Service:

[A] $1,500

Canada	Switzerland
Germany	Taiwan
Korea	United Kingdom
Mexico	

[B] $1,000

Argentina	Netherlands
Australia	New Zealand
Austria	Norway
Belgium	Singapore
Denmark	Spain
Finland	Sweden
France	United Arab Emirates
Greece	Venezuela
Italy	

[C] $750

Brazil	India
Chile	Ireland
Colombia	Israel
Egypt	Ivory Coast
Hungary	Pakistan

[D] $500

Dominican Republic	Nigeria
Guatemala	Panama
Honduras	Peru
Indonesia	Philippines
Jamaica	Portugal
Kenya	Saudi Arabia
Kuwait	South Africa
Malaysia	Thailand
Morocco	Turkey

Note.—Other countries may be aded to the above list at a later date.

Although the Department of Commerce is not legally required to issue this notice of fees under 15 U.S.C. 1525, this notice is being issued as a matter of general policy.

Authority: 15 U.S.C. 175 and 15 U.S.C. 1525.

Lew W. Cramer,
Director General, U.S. and Foreign Commercial Service.

[FR Doc. 89–5826 Filed 3–13–89; 8:45 am]
BILLING CODE 3510–FP–M

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeals by Korea Drilling Company, Ltd. (California) and John Bianchi (New York)

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Announcement of decisions.

On January 19, 1989, the Secretary of Commerce issued a decision in the consistency appeal by Korea Drilling Company, Ltd. (KDC). KDC had applied to the U.S. Environmental Protection Agency (EPA) for a National Pollutant Discharge Elimination System (NPDES) permit for the discharge of drilling muds and associated waste materials from its exploratory drilling vessel, the *Doo Sung*, on certain outer Continental Shelf tracts offshore California. Pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act, as amended (CZMA), 16 U.S.C. 1451 *et seq.*, the California Coastal Commission objected, barring issuance of the permit.

On appeal, the Secretary found that KDC's proposed activity met the regulatory criteria for an override of the Commission's objection on the ground that the activity was consistent with the objectives of the CSMA. EPA may therefore make its NPDES permit for KDC effective. Permit in hand, KDC may then bid for drilling contracts with companies possessing oil and gas leases for the enumerated tracts.

On January 25, 1989, the Acting Secretary of Commerce issued a decision in the consistency appeal by John Bianchi. Mr. Bianchi had applied to the U.S. Army Corps of Engineers for a permit for construction of a pier consisting of a rectangular open-pile deck, a ramp and a float behind his restaurant on the Reynolds Channel in Hempstead, New York. The pier was to serve as both a temporary dock for the boasts of restaurant patrons and an "alternate" waiting area for the patrons. Pursuant to section 307(c)(3)(A) of the CZMA, the New York Department of State (State) objected, barring issuance of the permit. As an alternative consistent with its coastal zone management program, the State recommended a much smaller open-pile dock in a "T"- or "L"-shape.

Mr. Bianchi appealed for an override of the State's objection on the ground that his activity was consistent with the objectives of the CZMA. On appeal, the Acting Secretary found that the proposed alternative was reasonable and available. Under the implementing regulations to the CZMA, such a finding precludes an override of the State's objection.

FOR ADDITIONAL INFORMATION CONTACT: Stephanie S. Campbell, Attoney/Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673–5200.

Date: March 7, 1989.

B. Kent Burton,

Assistant Secretary for Oceans and Atmosphere.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

[FR Doc. 89–5766 Filed 3–13–89; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management: Federal Consistency Appeal by Claire Pappas from an Objection by the New York Department of State

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

On February 6, 1989, En-Consultants, Inc., on behalf of Claire Pappas (Appellant), filed with the Secretary of Commerce a notice of appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's (Department) implementing regulations, 15 CFR Part 930, Subpart H. The appeal arises from an objection by the New York Department of State (State) to the Appellant's consistency certification for a U.S. Army Corps of Engineers (Corps) permit to construct a deck for dining purposes at a seafood restaurant in Freeport, New York. The State's objection precludes the Corps from issuing the permit pending the outcome of the Appellant's appeal.

If the Appellant perfects the appeal by filing the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice in the **Federal Register** and a local newspaper.

FOR ADDITIONAL INFORMATION CONTACT: Sydney Anne Minnerly, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673–5200.

Date: March 7, 1989.

B. Kent Burton,

Assistant Secretary for Oceans and Atmosphere.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

[FR Doc. 89–5765 Filed 3–13–89; 8:45 am]

BILLING CODE 3510-08-M

Intent To Evaluate Performance of the Delaware Coastal Management Program

AGENCY: National Oceanic and Atmospheric Administration. National Ocean Service. Office of Ocean and Coastal Resource Management.

ACTION: Notice of intent to evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resources Management (OCRM), announces its intent to evaluate the performance of the Delaware Coastal Management Program (CMP); Florida CMP; Rhode Island CMP; and American Samoa CMP; and New York (Hudson) National Estuarine Research Reserve through June 1989. Evaluation of coastal management programs will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA), which requires a continuing review of the performance of coastal states with respect to coastal management, including detailed findings concerning the extent to which the state has implemented and enforced the program approved by the Secretary of Commerce, addressed the coastal management needs identified in section 303(2)(A) through (I) of the CZMA, and adhered to the terms of any grant, loan or cooperative agreement funded under the CZMA. Evaluation of the National Estuarine Research Reserve will be conducted pursuant to section 315(f) of the CZMA, which requires the periodic review of the performance of each reserve with respect to its operation and management. The reviews involve consideration of written submissions, a site visit to the state, and consultation with interested Federal, state and local agencies and members of the public. Public meetings will be held as part of the site visits. The state will issue notice of these meetings. Copies of each state's most recent performance report, as well as the OCRMs notification letter and supplemental information request letter to the state are available upon request from the OCRM. Written comments from all interested parties on each of these programs to the contact listed below are encouraged at this time. OCRM will place subsequent notice in the Federal Register announcing the availability of the Final Findings based on each evaluation once these are completed.

FOR FURTHER INFORMATION CONTACT: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW, Washington DC 20235 (telephone 202/673–51044

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Date: February 27, 1989.

Thomas J. Maginnis,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 89–5821 Filed 3–13–89; 8:45 am]

BILLING CODE 3510-08-M

National Technical Information Service

Intent to Grant Exclusive Patent License; Absorbent Industries, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Absorbent Industries, Inc., having a place of business in Portland, Oregon, an exclusive license in the United States to practice the invention entitled "Modified Starches as Extenders for Absorbent Polymers" U.S. Patent 4,483,950. The patent rights to this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing , NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning (703) 487–4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89–5817 Filed 3–13–89; 8:45 am]

BILLING CODE 3510–04–M

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Nuclear Associates, a Division of Victoreen, Inc., having a place of business in Carle Place, NY 11514-1593, an exclusive license in the United States and certain foreign countries to practice the invention entitled "Anthropomorphic Cardiac Ultrasound Phantom," U.S. Patent Application Serial Number 7–257,174. The invention consists of (1) an apparatus which simulates part of the human cardiac anatomy and (2) a method which assesses the performance of ultrasound imaging, Doppler ultrasound or color/flow Doppler imaging devices. Another object of the invention is to provide a novel phantom apparatus to simulate human blood circulation for low reverberation ultrasound viewing. Prior to the grant of any license by NTIS, the patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy the instant patent application may be purchased from the NTIS Sales Desk by telephoning (703) 487–4650 or by writing to the Order Department, NTIS, 5285 Part Royal Road, Springfield, VA 22161

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89–5818 Filed 3–13–89; 8:45 am]

BILLING CODE 3510–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 29–30 March 1989.

Time: 0800–1700 hours, daily.

Place: Fort Gordon, Georgia.

Agenda: The 1989 Army Science Board Summer Study on Maintaining State of the Art in the Army Command and Control System will meet. Topics for the meeting include the CBRS and its application, and fielding and acquisition processes. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Richard E. Entlich,

Colonel, GS, Executive Secretary.

[FR Doc. 89–5893 Filed 3–13–89; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before April 13, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission to these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested,

e.g., new, revision, extension, existing or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting burden; and/or (6) recordkeeping burden; and (7) abstract. OMB invites public comments at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: March 9, 1989.

George Sotos,

Acting Director, for Office of Information, Resources Management.

Office of Management

Type of Review: Extension.
Title: Family Education Rights and Privacy Information Collection.
Frequency: On occasion.
Affected Public: State or Local Government.
Reporting Burden: Responses: 28,075 *Burden Hours:* 7,018.75.
Recordkeeping Burden: Recordkeepers: 0 *Burden Hours:* 0.
Abstract: Regulations require school districts and postsecondary institutions to provide disclosure or notification to parents and students of their rights and to keep a record of parties who have access to the student's records.

[FR Doc. 89-5897 Filed 3-13-89; 8:45 am]
BILLING CODE 4000-01-M

National Advisory Council on Indian Education, Closed Meeting

AGENCY: National Advisory Council on Indian Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Proposal Review Committee of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: March 27–28, 1989, 8:30 a.m. until conclusion of business each day.

ADDRESS: U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177, Washington, DC (202) 732–1887.

FOR FURTHER INFORMATION CONTACT: Jo Jo Hunt, Executive Director, National Advisory Council on Indian Education, 330 C Street, SW., Room 4072, Switzer Building, Washington, DC 20202–7556 (202) 732–1353).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (Part C of Title V of Pub. L. 100–297) and to advise Congress and the Secretary of Education with regard to federal education programs benefiting Indian children and adults.

The Proposal Review Committee of the Council will meet in closed session starting at approximately 8:30 a.m. and will end at the conclusion of business each day at approximately 5:00 p.m. The agenda includes reviewing grant applications for assistance under programs authorized by subparts 1, 2, and 3 of the Indian Education Act, including applications for (1) Discretionary Grants to Indian-Controlled Schools; (2) Planning, Pilot, and Demonstration Projects; (3) Educational Personnel Development Projects; (4) Educational Services Projects; (5) Indian Fellowships; and (6) Educational Services for Indian Adults. Under section 5342(b)(2) of subpart 4 of the Indian Education Act, the Council is authorized to review applications for assistance submitted under the Indian Education Act and to make recommendations to the Secretary of Education with respect to their approval.

The reviewing of applicants must be held in the highest confidence until the announcement is released by proper authorities as to which project will be funded. The premature disclosure of information discussed during the review process is likely to significantly frustrate implementation of proposed agency action. Financial information obtained from a person which is privileged or confidential contained in and related to these applications will be discussed at the review session. In addition, discussion will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (9), (4), and (6) of section 552b(c) of the Government in the Sunshine Act [Pub. L. 94–409; 5 U.S.C. 552b(c)].

The public is being given less than 15 days notice of this meeting because of scheduling requirements to meet the funding target dates of the Office of Indian Education.

A summary of the activities of the closed meeting and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within 14 days of the meeting.

Dated: March 7, 1989. Signed at Washington, DC.

Jo Jo Hunt,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 89-9767 Filed 3-13-89; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Final Consent Order with Thomas P. Reidy, Inc.

AGENCY: Economic Regulatory Administration, Department of Eenrgy.

ACTION: Final action of proposed consent order.

SUMMARY: The Department of Energy (DOE) hereby gives the notice required by 10 CFR 205.199J that it has adopted as final the Consent Order with Thomas P. Reidy, Inc. (predecessor to Ramada Oil and Gas Corporation) (Reidy), executed on January 13, 1989, and published for comment in 54 FR 5265 on February 2, 1989.

As required by 10 CFR 205.199J, DOE provided a period of thirty (30) days following publication of the Notice of Proposed Consent Order for the submission of comments. The ERA received no comments in response to this Notice. Accordingly, ERA has determined that the Consent Order should be made final without modification. The Consent Order becomes effective as a Final Order of the DOE on the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Office of Enforcement Litigation, Economic Regulatory Administration, U.S. Department of Energy, Room 3H–017, RG–32, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1699.

Copies of the Consent Order may be obtained free of charge by written request to "Reidy Consent Order Request" at the above address or by calling Dorothy Hamid at the above telephone number. Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Room 1E–90, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTAL INFORMATION: On February 2, 1989, DOE published notice in the **Federal Register**, Vol. 54 at page 5265, announcing the execution of a Proposed Consent Order between Reidy and DOE. In compliance with the DOE regulations, that Notice, and a Press

Release, issued on February 3, 1989, summarized the proposed Consent Order and the relevant facts.

The Consent Order resolves all civil and administrative claims or causes of action regarding Reidy's compliance with the obligations under the Federal petroleum price and allocation regulations. The Consent Order requires Reidy to pay to DOE $5.2 million within thirty (30) days of the effective date of the Consent Order, to assign refunds of approximately $170,000, including accrued interest, which were awarded to Reidy in refund proceedings in *Gulf Oil Corp./Thos. P. Reidy, Inc.* and to waive all other claims for refunds in Subpart V proceedings. ERA will direct that all amounts paid by Reidy pursuant to the Consent Order be deposited into an interest-bearing escrow account for ultimate distribution pursuant to Special Refund Procedures under 10 CFR Part 205, Subpart V, and DOE's Modified Statement of Restitutionary Policy at 51 FR 27899 (August 4, 1986).

As noted, no comments were received in response to the Notice of the Proposed Consent Order. Accordingly, ERA has determined to adopt the Proposed Consent Order without modification as a final Order of the DOE, pursuant to 10 CFR 205.199J. The Consent Order becomes effective upon publication of this Notice.

Issued in Washington, DC, on March 6, 1989.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.

[FR Doc. 89-5894 Filed 3-13-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP89-88-000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

March 8, 1989.

Take notice that ANR Pipeline Company ("ANR") on March 1, 1989 tendered for filing as a part of its FERC Gas Tariff Original Volume No. 1-A, six copies each of First Revised Sheet No. 136B and Original Sheet No. 136C. These sheets set forth a new tariff provision governing the voluntary reallocation of firm capacity for OCS transportation services and is filed in compliance with § 284.305(e) of the Federal Energy Regulatory Commission's (Commission) Regulations. ANR also has notified the Commission that it elects to continue to use its currently effective rates for transportation services on the OCS performed pursuant to individually issued certificates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene on or before March 15, 1989. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5792 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-75-000]

Black Marlin Pipeline Co; Filing

March 6, 1989.

Take notice that on March 1, 1989, Black Marlin Pipeline Company (Black Marlin) tendered for filing to become a part of Black Marlin's FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

4th Revised Sheet No. 117
4th Revised Sheet No. 118
4th Revised Sheet No. 119
4th Revised Sheet No. 120
4th Revised Sheet No. 121
4th Revised Sheet No. 122
4th Revised Sheet No. 123
4th Revised Sheet No. 124
4th Revised Sheet No. 125
4th Revised Sheet No. 126-199
2nd Revised Sheet No. 215
1st Revised Sheet No. 215A
2nd Revised Sheet No. 300
3rd Revised Sheet No. 301
2nd Revised Sheet No. 302
3rd Revised Sheet No. 303
1st Revised Sheet No. 304

In compliance with Order No. 509 and 18 CFR 284.305(b), Black Marlin states that the above-noted tariff sheets establish the new rate schedules and the rates it will utilize in providing transportation through its OCS facilities. Black Marlin proposes to establish Rate Schedules FTS/OCS and ITS/OCS under which it will provide "open access" transportation on a firm and interruptible basis respectively in accordance with Order No. 509.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5803 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-86-000]

Chandeleur Pipe Line Co.; Tariff Filing

March 8, 1989.

Take notice that on March 1, 1989, Chandeleur Pipe Line Company (Chandeleur) tendered for filing proposed revised tariff sheets designed to implement changes to its FERC Gas Tariff in compliance with § 284.301 et seq. of the Commission Regulations along with a statement explaining the continued use of Chandeleur's existing rates.

The proposed effective date for the revised tariff sheets is April 1, 1989.

While Chandeleur believes it has complied with all the applicable sections of § 284.301 of the Commission's Regulations, it nevertheless, respectfully requests that waiver be granted of all applicable rules and regulations of the Commission as may be necessary to implement these revised tariff sheets subject to this notice to become effective April 1, 1989.

Chandeleur states that a copy of this filing has been mailed to each of Chandeleur's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests should be filed on or before March 15, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies

of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5788 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-80-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 8, 1989.

On March 1, 1989, CNG Transmission Corporation ("CNG") submitted for filing, as part of its FERC Gas Tariff Original Volume No. 1, the following tariff sheet: Original Sheet No. 127-A.

CNG has requested that the Commission permit this filing to become effective as of April 1, 1989. This tariff sheet is being filed in compliance with Commission Order Nos. 509 and 509-A.

CNG states that copies of the filing were served upon all of its Volume No. 1 customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests shall be filed on or before March 15, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5793 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-77-000]

Florida Gas Transmission Co.; Filing

March 6, 1989.

Take notice that on March 1, 1989, Florida Gas Transmission Company (FGT) tendered for filing to become a part of FGT's FERC Gas Tariff, First Revised Volume No. 3, the Tariff Sheets listed on Appendix A.

FGT states the listed tariff sheets are filed in compliance with Order No. 509 and 18 CFR 284.305(b) to establish the new rate schedules, Rate Schedules FTS-OCS and ITS-OCS, FGT will utilize in providing firm and interruptible transportation through its facilities located in the Outer Continental Shelf (OCS). FGT proposes an effective date of April 1, 1989 for the above noted tariff sheets. FGT proposes that Rate Schedules FTS-OCS and ITS-OCS would remain in effect only until FGT accepts a blanket transportation certificate pursuant to § 284.221 of the commission Regulation's and Order No. 436 and 500, *et. seq.* FGT has pending at Docket No. CP89-555-000, an application for a blanket transportation certificate which application also seeks to establish generally applicable firm and interruptible Rate Schedules FTS-1 and ITS-1, respectively. Upon the date of FGT's acceptance of such blanket certificate, Rate Schedules FTS-OCS and ITS-OCS would be superseded by Rate Schedules FTS-1 and ITS-1, respectively, and FGT would provide service on its OCS facilities under such generally applicable rate schedules.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

Original Sheet No. 1039
Original Sheet No. 1040
Original Sheet No. 1041
Original Sheet No. 1042
Original Sheet No. 1043
Original Sheet No. 1044
Original Sheet No. 1045
Original Sheet No. 1046
Original Sheet No. 1047
Original Sheet No. 1048
Original Sheet No. 1049
Original Sheet No. 1050
Original Sheet No. 1051
Original Sheet No. 1052
Original Sheet No. 1053
Original Sheet No. 1054
Original Sheet No. 1055
Original Sheet No. 1056
Original Sheet No. 1057
Original Sheet No. 1058
Original Sheet No. 1059
Original Sheet No. 1060
Original Sheet No. 1061
Original Sheet No. 1062
Original Sheet No. 1063
Original Sheet No. 1064
Original Sheet No. 1065
Original Sheet No. 1066
Original Sheet No. 1067
Original Sheet No. 1068
Original Sheet No. 1069
Original Sheet No. 1070
Original Sheet No. 1071
Original Sheet No. 1072
Original Sheet No. 1073
Original Sheet No. 1074
Original Sheet No. 1075
Original Sheet No. 1076
Original Sheet No. 1077
Original Sheet No. 1078
Original Sheet No. 1079
Original Sheet No. 1080
Original Sheet No. 1081
Original Sheet No. 1082
Original Sheet No. 1083
Original Sheet No. 1084
Original Sheet No. 1085
Original Sheet No. 1086
Original Sheet No. 1087
Original Sheet No. 1088
Original Sheet No. 1089
Original Sheet No. 1090
Original Sheet No. 1091

[FR Doc. 89-5804 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-69-000]

Freeport Interstate Pipeline Co.; Filing

March 7, 1989.

Take notice that on March 1, 1989, Freeport Interstate Pipeline Company (Freeport) filed First Revised Sheet No. 49 to its FERC Gas Tariff, Original Volume No. 1, to be effective April 1, 1989. Freeport states that this filing is in compliance with Commission Order Nos. 509 and 509-A.

Freeport states that its existing transportation service is performed under the authority of section 311(a)(1) of the Natural Gas Policy Act and implementation of Order Nos. 509 and 509-A will not disrupt or discriminate for or against any transportation service performed under section 7(c) of the Natural Gas Act. Freeport states further that it has only one existing shipper and only one known potential shipper, its affiliate, Freeport-McMoRan LP. For this reason, Freeport indicates that its tariff revisions are concise, since it is inconceivable under present circumstances that the reallocation of firm capacity provided in Order Nos. 509 and 509-A would have more than relatively limited import for its operations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such motions or protests should be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5805 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-82-000]

High Island Offshore System; Proposed Changes in FERC Gas Tariff

March 8, 1989.

Take notice that on March 1, 1989, High Island Offshore System ("HIOS") tendered for filing its FERC Gas Tariff, First Revised Volume No. 1.

According to HIOS, an entirely new Volume No. 1 (First Revised Volume No. 1) is being submitted because so many changes in its presently effective Original Volume No. 1 are required in order to comply with the Commission's Order Nos. 509 and 509-A.

HIOS proposes to continue to charge its presently effective rates, which are being collected, subject to refund, in Docket No. RP87-37-000. The principal changes relate to changes being made to comply with Order Nos. 509 and 509-A. In this connection, a new Rate Schedule FT is included which relates to the procedures to be followed in allocating available firm capacity on the HIOS system.

HIOS proposes that the rates contained in the Schedule of Rates (Original Sheet No. 8) become effective on April 1, 1989, subject to refund in Docket No. RP89-37-000. HIOS also proposes that the rest of First Revised Volume No. 1 become effective on April 1, 1989, without suspension.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 285.214). All such motions or protests should be filed on or before March 15, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5789 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-86-004]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

March 8, 1989.

Take notice that K N Energy, Inc. ("K N") on March 3, 1989 tendered for filing revised tariff sheets reflecting changes in base rates in compliance with the Commission's February 17, 1989 Order approving offer of settlement subject to modifications. The proposed effective date for these tariff sheets is February 14, 1989.

KN states that tariff sheets have also been filed with restated base rates replacing those submitted with KN's regularly scheduled quarterly PGA filing (submitted) January 27, 1989). The proposed effective date for the PGA is March 1, 1989.

Copies of the filing were served upon K N's jurisdictional customers, and interested public bodies.

Any person desiring to be heard or to make any protest with reference to this filing should, on or before March 15, 1989, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5794 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-87-000]

Mitco Pipeline Co.; Tariff Filing

March 6, 1989.

Take notice that on March 1, 1989, Mitco Pipeline Company (Mitco), tendered for filing with the Commission, to be effective April 1, 1989, the following sheets to Mitco's effective FERC Gas Tariff, Original Volume No. 1:

- First Revised Sheet No. 2 [Table of Contents)
- Original Sheet Nos. 8 through 19 (Sheets reserved for future use)
- Original Sheet Nos. 20 through 46, Rate Schedule FT (Firm Transportation)
- Original Sheet Nos. 47 through 73, Rate Schedule IT (Interruptible Transportation)

Mitco states that it elects to continue to use its current rate under Rate Schedule T-1 for transportation service provided for Transcontinental Gas Pipe Line Corporation (Transco) after April 1, 1989, pursuant to its existing certificate on file with the Commission, with explanation for such continued use as set forth in the filing. Mitco operates a small 8.5 mile pipeline delivering natural gas from one block on the Outer Continental Shelf to a single interconnection with an intrastate pipeline. Mitco does not anticipate providing any additional services to any other shipper beyond the existing service to its only customer, Transco. Mitco states that it is filing Rate Schedules FT and IT solely to comply with Order Nos. 509 and 509-A, which rate schedule provide, *inter alia*, for an open season for firm and interruptible transportation capacity. The rates proposed for these rate schedules continue to reflect the existing rate upon which the Commission relied when the facilities were certificated.

Mitco requests the Commission grant whatever waivers may be necessary for the Commission to accept the proposed tariff sheets, and for the tariff sheets to become effective on April 1, 1989.

Any persons desiring to be heard or to make any protest with reference to said filing should, on or before March 14, 1989, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or protest in

accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any conference or hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 89–5806 Filed 3–13–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89–68–000]

Natural Gas Pipeline Co., of America Proposed Changes in FERC Gas Tariff

March 6, 1989.

Take notice that on March 1, 1989 in compliance with Order No. 509, as amended by Order No. 509–A, Docket No. RM88–15–000, National Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1A,

Second Revised Sheet No. 23
Second Revised Sheet No. 24 and
First Revised Sheet No. 25

Natural states these sheets are proposed to be effective April 1, 1989. These sheets contain a revision to section 3(b)(ii) to conform to the requirements of 18 CFR 284.305(e) of the Commission's Regulations.

A copy of this filing was made to each of Natural's jurisdictional and transportation customers and to interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 and 385.214. All such motions or protests must be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–5807 Filed 3–13–89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2320 New York]

Niagara Mohawk Power Corp.; Intent To File an Application for a New License

March 7, 1989.

Take notice that on December 29, 1988, Niagara Mohawk Power Corporation, the existing licensee for the Middle Raquette River Hydroelectric Project No. 2320, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99–495. The original license for Project No. 2320 was issued effective November 1, 1949, and expires December 31, 1993.

The project is located on the Raquette River in St. Lawrence County, New York. The principal works of the Middle Rawuette River Project include the following developments, each with concrete gravity dams: Higley, with a reservoir of 700 acres and a 4,480-kW capacity powerhouse; Colton, with a reservoir of 152 acres and a 29,520-kW capacity powerhouse; Hannawa, with a reservoir of 168 acres and a 7,200-kW capacity powerhouse; and Sugar Island, with a reservoir of 29 acres and a 4,800-kW capacity powerhouse. All developments have transmission line connections and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 300 Erie Boulevard West, Building A–1, Syracuse, NY 13202, Attn: Barbara J. Raymond, C.R.M., telephone (315) 428–6353.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89–5785 Filed 3–13–89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2539; New York]

Niagara Mohawk Power Corp.; Intent To File an Application for a New License

March 7, 1989.

Take notice that on December 29, 1988, Niagara Mohawk Power Corporation, the existing licensee for the School Street Hydro-electric Project No. 2539, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2539 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Mohawk River in Albany and Saratoga Counties, New York. The principal works of the School Street Project include a gravity dam of masonry construction with a concrete cap; a reservoir of 100 acres; and intake into a power canal, a forebay, and penstocks controlled at a gatehouse; a powerhouse with an installed capacity of 38,800 kW; transmission line connections; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 300 Erie Boulevard West, Building A–1, Syracuse, NY 13202, Atten: Barbara J. Raymond, C.R.M., telephone (315) 428–6353.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at lease 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89–5784 Filed 3–13–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89–72–000]

Nothern Natural Gas Co.; Filing

March 6, 1989.

Take notice that on March 1, 1989, Northern Natural Gas Company's Division of Enron Corp., tendered for

filing to become a part of Northern's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet:

Second Revised Sheet No. 52f.3

Northern states that this tariff sheet is filed in compliance with Order No. 509 to set forth that Norther will reallocate firm transportation capacity, voluntarily relinquished pursuant to § 284.304(c) of the Commission's Regulations, on a first-come, first-served basis.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5808 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-117-007]

Northern Natural Gas Co.; Division of Enron Corp.; Compliance With Order Nos. 483 and 483-A

March 8, 1989.

Take notice that on February 28, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing, as part of Northern's FERC Gas Tariff, Third Revised Volume No. 1 (Volume 1 Tariff) and Original Volume No. 2 (Volume 2 Tariff), the following tariff sheets to become effective January 1, 1989:

Third Revised Volume No. 1
Seventh Revised Sheet No. 65
Substitute Fifth Revised Sheet No. 66
Substitute Seventh Revised Sheet No. 67
Substitute Sixth Revised Sheet No. 68
Substitute Ninth Revised Sheet No. 69
Second Substitute First Revised Sheet No. 69a
Substitute Eighth Revised Sheet No. 70
Substitute Fourth Revised Sheet No. 70a
Third Revised Sheet No. 70b
Substitute Fifth Revised Sheet No. 70c
Original Volume No. 2
Substitute Fifth Revised Sheet No. 1d
Substitute Fifth Revised Sheet No. 1e
Substitute Sixth Revised Sheet No. 1f
Substitute Eighth Revised Sheet No. 1g
Second Substitute Sixth Revised Sheet No. 1h
Substitute Sixth Revised Sheet No. 1i
Substitute Second Revised Sheet No. 1i.1
Fifth Revised Sheet No. 1i.2
First Substitute Original Sheet No. 1i.2a

Northern states that these tariff sheets are in compliance with the Letter Orders dated September 29, 1988, and November 18, 1988, respectively, in order that Northern's tariff will be in conformance with Order Nos. 483 and 483-A.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 15, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5790 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-259-007]

Northern Natural Gas Co., Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

March 6, 1989.

Take notice that Northern Natural Gas Company, Division of Enron Corp., (Northern) on February 27, 1989, tendered for filing revised changes in its FERC Gas Tariff in compliance with the Commission's Order dated January 31, 1989 in this proceeding. Northern states that the filing reflects a further decrease in rates below the reduced rates originally filed by Northern in this proceeding. Northern has requested that the proposed filing is made effective October 27, 1988.

The Company states that copies of the filing have been mailed to each of its customers purchasing gas and receiving transportation and gathering services under its FERC Gas Tariff and to interested State Commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests must be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5809 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-88-005]

Panhandle Eastern Pipe Line Co.; Tariff Filing

March 6, 1989.

Take notice that on February 27, 1989 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 32-BU.1

The proposed effective date of this revised tariff sheet is March 1, 1989.

Panhandle states that this revised tariff sheet is being refiled in accordance with Ordering Paragraph (B) of the Commission's Order Granting Rehearing issued January 31, 1989.

Copies of this letter and enclosure are being served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5810 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-262-002]

Panhandle Eastern Pipe Line Co.; Compliance Filing

March 6, 1989.

Take notice that on February 28, 1989 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the revised tariff sheets as listed on Appendices A and B, attached to the filing.

Panhandle states these tariff sheets to be effective April 1, 1989 reflect (1) compliance with Ordering Paragraphs (B), (C), (D), and (E) of the Commission's Order dated October 31, 1988; (2) the application of Ordering Paragraph (B) of the Commission's Order dated September 28, 1988 in Docket No. RP88-241-000; and (3) the regularly scheduled Annual PGA filing to be effective March 1, 1989.

Panhandle states that subsequent to its filing of Sept. 30, 1988, it determined that the fuel percentage for Rate Schedule PT should also reflect the seasonal basis of rates herein to reflect the distribution of these costs among the transportation customers who use the system at flow rates which are not constant from season to season. Accordingly, Panhandle has included seasonally adjusted fuel percentages herein and respectfully requests wavier of the Commission's Regulations to permit an effective date of April 1, 1989. No change in revenues results from this modification. If this request is not granted in total, Panhandle has also included hererin alternate tariff sheets, listed in Appendix C hereto, which do not reflect the seasonally adjusted fuel percentages.

Panhandle states that the filing of these revised tariff sheets which satisfies the requirements of the Commission's Order dated October 31, 1988 in this proceeding is without prejudice to Panhandle's rights on rehearing or in any judicial review proceeding or its position in this proceeding and the Docket No. RP88-241-000 proceeding.

Copies of this letter and enclosures are being served on all jurisdictional customer, interested state commissions and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5811 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-73-000]

Pelican Interstate Gas System; Proposed Changes in FERC Gas Tariff

March 6, 1989.

Take notice that on March 1, 1989, in compliance with Order No. 509, as amended by Order No. 509-A, Docket No. RM88-15-000, Pelican Interstate Gas System (Pelican) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Sixth Revised Sheet No. 1, Original Sheets Nos. 1A, 1B, 2B and 35 through 98. Pelican states these proposed sheets are intended to conform to 18 CFR 284.7 and 284.8(d) or 284.9(d), as applicable, to provide nondiscriminatory open access transportation effective April 1, 1989. Pelican further states that the tariff sheets are intended to set in place Rate Schedules FTS and ITS and the General Terms and Conditions under which Pelican would perform firm and interruptible transportation.

Copies of this filing have been served upon Pelican's jurisdictional customers, entities inquiring about service, the Louisiana Public Service Commission and the Department of Natural Resources Office of Conservation of the State of Louisiana.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5812 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2370; Maryland]

Pennsylvania Electric Co.; Intent To File an Application for a New License

March 6, 1989.

Take notice that on December 30, 1988, Pennsylvania Electric Company, the existing licensee for the Deep Creek Hydroelectric Project No. 2370, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2370 was issued effective May 1, 1965, and will expire December 31, 1993.

The proejct is located on the Deep Creek, a tributary of the Youghiogheny River, in Garrett County, Maryland. The principal works of the Deep Creek Project include an 86-foot-high, 1,300-foot-long earth and rockfill dam with a concrete side channel spillway; a reservoir; a 9-foot-diameter, 7,100-foot-long concrete and steel lined power tunnel leading to a surge tank and two 6-foot-diameter steel penstocks; a powerhouse with an installed capacity of 19,200 kW; a switchyard with transmission line connections; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 1001 Broad Street, Johnstown, PA 15907.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license appications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for

license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5786 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-74-000]

Southern Natural Gas Co.; Compliance Filing

March 7, 1989.

Take notice that on March 1, 1989, Southern Natural Gas Company (Southern) filed Second Revised Sheet No. 30AA and Original Sheet No. 30AA.1 to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective April 1, 1989. Southern states that this filing is made in compliance with Commission Order Nos. 509 and 509-A.

Southern states that on Sheet Nos. 30AA and 30AA.1—New section 6(i) has been added to Rate Schedule FT to provide that if Southern does not have capacity available to serve all or part of a request for service through Outer Continental Shelf (OCS) facilities, it will tender names of existing firm shippers using such capacity within 10 days of receiving the request. Southern further states that if a shipper desires to relinquish capacity on OCS facilities, such capacity shall be reallocated on a first-come, first-served basis to the extent capacity is requested. Southern points out that shippers receiving reallocated capacity from section 7 certificated services must agree to accept the original term of the service unless Southern agrees otherwise. Section 6(h) has been revised to reference new section 6(i).

Southern states that copies of this filing are being mailed to all of its jurisdictional purchasers, shippers, and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211 (1988). All such motions or protests should be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5813 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-83-000]

Superior Offshore Co.; Tariff Filing

March 6, 1989.

Take notice that on March 1, 1989, Superior Offshore Pipeline Company ("SOPCO"), 12450 Greenspoint Drive, Houston, Texas 77060-1991, filed, pursuant to § 284.304 of the Commission's Regulations promulgated by Order Nos. 509 and 509A, setting forth the method by which SOPCO will allocate available firm and interruptible transportation capacity in the following tariff sheets:

Original Volume No. 1

Second Revised Sheet No. 32
First Revised Sheet No. 32A
First Revised Sheet No. 32B
First Revised Sheet No. 32C

Copies of this filing were served on SOPCO customers.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to interevene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5814 Filed 3-13-89; 8:45 pm]

BILLING CODE 6717-01-M

[Docket No. RP89-81-000]

Tarpon Transmission Co.; Tariff Filing

March 8, 1989.

Take notice that on March 1, 1989, Tarpon Transmission Company (Tarpon), an interstate natural gas pipeline operating on the Outer Continental Shelf (OCS), tendered for filing with the Commission as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective April 1, 1989: First Revised Sheet No. 45, Original Sheet No. 45-A, and First Revised Sheet No. 46. Tarpon states that these tariff sheets set forth the method Tarpon will use to reallocate firm transportation capacity in the future, in accordance with Commission Order Nos. 509 and 509-A.

Tarpon further states that it is currently providing "open access" transportation services, and that rates for such services conforming to the requirements of Part 284 of the Commission's Regulations have been effective since December 1, 1987. Tarpon also notifed the Commission, pursuant to revised § 284.305(d)(2), that it will continue using its current rate for non-Part 284 transportation service to Trunkline Gas Company after April 1, 1989, subject to the outcome of the remand proceeding presently pending before the Commission in Docket Nos. RP84-82, *et al.* Tarpon states that the rate charged Trunkline is the same rate as that charged for Part 284 transportation services pursuant to its Rate Schedules ITS and FTS.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Such motions or protests should be filed on or before March 15, 1989. Such motions or protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person desiring to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5791 Filed 3-13-89; 8:45 pm]

BILLING CODE 6717-01-M

[Docket No. RP89-76-000]

Transcontinental Gas Pipe Line Corp.; Proposed Tariff Sheets

March 6, 1989.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on March 1, 1989 the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1. Such sheets are proposed to be effective April 1, 1989.

First Revised Sheet No. 196–E
Original Sheet No.196–F

Transco states that it is submitting a tariff sheet which is required by § 284.305(3) of the Commission's Regulations. Section 284.305(e) states: "By March 1, 1989, to be effective no later than April 1, 1989, all OCS pipelines must file tariff provisions setting forth the method by which firm transportation capacity will be reallocated under § 284.304(c) in the event two or more shippers seek to obtain the firm capacity that one or more shippers offer to relinquish." Accordingly, Transco is submitting First Revised Sheet No. 196–E and Original Sheet No.196–F to be included in its FERC Gas Tariff, Second Revised Volume No. 1. Such tariff sheets will be included in Transco's Rate Schedule FT.

Transco states that copies of the instant filing are being mailed to its jurisdictional customers and interested State Commissions. In accordance with the provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–5815 Filed 3–13–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–89–000]

United Gas Pipe Line Co.; Proposed Changes in FERC Gas Tariff

March 8, 1989.

Take notice that on March 1, 1989, United Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251–1478, filed pursuant to § 284.305(e) of the Federal Energy Regulatory Commission's (Commission) Regulations, tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff. The tariff sheets filed by United are:

To Be Effective April 1, 1989

Third Revised Sheet No. 48–A
Original Sheet No. 48–A1
Original Sheet No. 48–A2

United states that these tariff sheets are filed, as required by Order No. 509 issued December 9, 1988, as amended by Order No. 509–A issued February 21, 1989, to establish the manner in which firm capacity will be reallocated under § 284.304(c) of the Commission's Regulations in the event that more than one Shipper seeks to obtain the firm capacity relinquished.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, on or before March 15, 1989, and in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person desiring to become a party must petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–5795 Filed 3–13–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2442 New York]

City of Watertown, New York; Intent To File an Application for a New License

March 6, 1989.

Take notice that on December 30, 1988, the City of Watertown, New York, the existing licensee for the Watertown Hydroelectric Project No. 2442, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2442 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Black River in Jefferson County, New York. The principal works of the Watertown Project include a main concrete diversion dam, 13.5 feet high and 650 feet long, and a second similar diversion dam, 200 long; about 225 acres of reservoir; a concrete headgate structure with 25 wood gates and a canal, 20 feet deep, 55 feet wide and 950 feet long; a powerhouse with an installed capacity of 5,400 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE, Washington, DC 20426. The above information as described in the rule is now available from the licensee at Room 302, Watertown Municipal Building, 245 Washington Street, Watertown, NY 13601–3380.

Pursuant to section 15(c)(1) of the Act, each applicant for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89–5787 Filed 3–13–89; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3533–7]

Workshop on Qualitative and Quantitative Comparability of Human and Animal Developmental Neurotoxicity

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: This notice announces a scientific workshop, sponsored by the Environmental Protection Agency's Office of Toxic Substances and Office of Research and Development and the National Institute for Drug Abuse, to critically evaluate the effects of known human developmental neurotoxicants and to compare them with the effects seen in animal studies. The meeting will be held at the Williamsburg Hilton Hotel in Williamsburg, Virginia.

DATES: The workshop will be held on April 11, 12, and 13, 1989, beginning on Tuesday, April 11, at 8:30 a.m. and ending Thursday, April 13, at approximately 12:00 noon. There are

limited spaces available for members of the public to attend either as participants or observers.

FOR FURTHER INFORMATION CONTACT: Dr. Cooper Rees, U.S. Environmental Protection Agency, (TS-796), 401 M Street SW., Washington, DC, 20460, Tel. (202) 382-3505 (FTS: 382-3505), for information about the workshop itself and for application as a participant or an observer. Space is limited. Apply by March 13, 1989.

SUPPLEMENTARY INFORMATION: Several agents have been identified as developmental neurotoxicants in humans: ethanol, methylmercury, PCBs, lead, x-irradiation, diphenylhydantoin, and several substances of abuse. These agents have been evaluated in a number of animal studies and qualitative comparisons between the human and animal data have been made for some. In the past, several symposia have been held where data have been presented on these chemicals, but there has been no rigorous review of the data, especially a comparison of effects based on dose. This information would be extremely valuable for building an information base for the purposes of risk assessment (e.g., reducing uncertainties regarding interpretation of results) and for use in establishing criteria for selecting agents. An Agency-wide workgroup is developing test guidelines in this area.

The outline of the program includes: (1) On April 11, a full day of presentations by experts summarizing human and animal data on given chemicals or classes of chemicals; (2) on April 12, a full day of small work group discussions to address specific issues (Qualitative Comparisons: Neurobiology, Study Design, Quantitative Comparisons, and Triggers for Testing) and prepare a report; and (3) on April 13, a half-day of summarizing the reports of the workgroups' conclusions. Participants will include speakers and attendees who are being invited because of their specific expertise and a limited number of additional members of the public who express an interest in attending. The proceedings and results of this workshop will be submitted for publication.

Dated: March 1, 1989.

Erich Bretthauer,

Acting Assistant Administrator for Research and Development.

[FR Doc. 89-5334 Filed 3-7-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Agency Forms under Review

March 8, 1989.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340).

Final approval under OMB delegated authority of the extension, without revision, of the following report

Report title: Notification of Foreign Branch Status.

Agency form number: FR 2058.

OMB Docket number: 7100-0069.

Frequency: Event-generated.

Reporters: State member banks, Edge and Agreement Corporations, and bank holding companies.

Annual reporting hours: 29.

Estimated number of respondents: 116.

Estimated average hours per response: 0.25.

Small businesses are affected.

General description of reports:

This information collection is mandatory [12 U.S.C. 321, 601, 602, 615, and 1844(c)] and is not given confidential treatment.

This report notifies the Federal Reserve of the opening, closing, or relocation of a foreign branch of state member banks, Edge and Agreement corporations, or bank holding companies. This information enables the Federal Reserve to ensure the safety and soundness of the U.S. banking system.

Board of Governors of the Federal Reserve System, March 8, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-5764 Filed 3-13-89; 8:45 am]

BILLING CODE 6210-01-M

Bancmidwest Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 31, 1989.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. BancMidwest Corporation, St. Paul, Minnesota; to engage *de novo* in providing data processing services that are financial, banking, or economic in nature pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in Minnesota and Wisconsin.

Board of Governors of the Federal Reserve System, March 8, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–5758 Filed 3–13–89; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies; Rudolph E. Farber

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 28, 1989.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Rudolph E. Farber, Neosho, Missouri; to acquire an additional 0.92 percent of the voting shares of Anderson Bancshares, Inc., Neosho, Missouri, and thereby indirectly acquire Anderson State Bank, Neosho, Missouri.

Board of Governors of the Federal Reserve System, March 8, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–5759 Filed 3–13–89; 8:45 am]

BILLING CODE 6210–01–M

Louisville Co.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) [and § 225.21(a) of Regulation Y (12 CFR 225.21(a))] to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 30, 1989.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Louisville Company, Louisville, Nebraska; to retain Home State Insurance Agency, Louisville, Nebraska, and thereby continue to engage in general insurance agency activities pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y in the communities of Louisville, Nebraska, and Cedar Creek, Nebraska.

Board of Governors of the Federal Reserve System, March 8, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–5760 Filed 3–13–89; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; James W. Miller et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's holding Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 28, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. James W. Miller & Theodore G. Saltzman, Jr.; to each acquire 2.68 percent of the voting shares of Pioneer Development Company, Sergeant Bluff, Iowa, for a total for each notificant of 25.82 percent, and thereby indirectly acquire Pioneer Bank, Sergeant Bluff, Iowa.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *George A. Walker,* Murriet A, California; to acquire at least 13.03 percent of the voting shares of California City Bancorp, Orange, California, and thereby indirectly California City Bank, N.A., Orange, California.

Board of Governors of the Federal Reserve System, March 8, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–5761 Filed 3–13–89; 8:45 am]

BILLING CODE 6210–01–M

The National Bancorp of Kentucky et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the

Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 31, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. The National Bancorp of Kentucky, Lexington, Kentucky; to acquire 100 percent of the voting shares of National Bank & Trust Company of Paris, Paris, Kentucky.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. CB&T Clarksburg Corp., Fairmont, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank & Trust of Harrison County, Clarksburg, West Virginia.

2. CB&T Financial Corp., Fairmont, West Virginia, and CB&T Clarksburg Corp., Fairmont, West Virginia; to merge with Consolidated Banc Shares, Inc., Clarksburg, West Virginia, and thereby indirectly acquire the Lowndes Bank, Clarksburg, West Virginia.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Ponte Vedra Banking Company, Ponte Vedra Beach, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Ponte Vedra National Bank, Ponte Vedra Beach, Florida, a *de novo* bank.

Board of Governors of the Federal Reserve System, March 8, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-5762 Filed 3-13-89; 8:45 am]

BILLING CODE 6210-01-M

Susquehanna Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 3, 1989.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Susquehanna Bancshares, Inc., Lititz, Pennsylvania; to acquire 100 percent of the voting shares of Farmers & Merchants Bank of Hagerstown, Hagerstown, Maryland.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Chemical Financial Corporation, Midland, Michigan; to acquire 100 percent of the voting shares of Community Financial Corporation, Harbor Beach, Michigan, and thereby indirectly acquire The Cass City State Bank, Cass City, Michigan; The Peoples State Bank of Caro, Michigan, Caro, Michigan, and Huron Community Bank, Harbor Beach, Michigan.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Illinois One Bancorp, Inc., Shawneetown, Illinois; to acquire 100 percent of the voting shares of First State Bank of Elizabethtown, Elizabethtown, Illinois.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Thompson Insurance, Inc., Englewood, Colorado; to become a bank holding company by acquiring 81 percent of the voting shares of Basin State Bank, Stanford, Montana.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grant Avenue, Kansas City, Missouri 64198:

1. American National Corporation, Omaha, Nebraska; to acquire 99 percent of the voting shares of American National Bank of Sarpy County, Papillion, Nebraska, in organizaiton, which will engage in the sale of credit-life insurance and discount brokerage activities.

Board of Governors of the Federal Reserve System, March 8, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-5763 Filed 3-13-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse and Mental Health Administration

Substance Abuse Prevention Technical Assistance Workshops

AGENCY: Office of Substance Abuse Prevention (OSAP).

ACTION: Notice of technical assistance workshops.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming six (6) regional technical assistance workshops to assist prospective applicants in responding to the Office for Substance Abuse Prevention's three grant announcements: Drug and Alcohol Abuse Prevention—High Risk Youth Demonstration Grants; Model Projects for Pregnant and Postpartum Women and their Infants; and the Community Youth Activity Program.

Name: Office for Substance Abuse Prevention Technical Assistance Workshops.

Region/Date/Location

Western Region

March 15–16, 1989

Phoenix Hyatt, 122 North Second Street, Phoenix, AZ, (602) 252–1234.

Southeast Region

March 28–29, 1989

Sheraton Hotel, 170 Lockwood Dr., Charleston, SC. (803) 723–3000.

Southwest Region

March 30–31, 1989

Menger Hotel, 204 Alamo Plaza, San Antonio, TX, 1–800–345–9285.

Central Region

April 3–4 1989

Radisson North Hotel, 4900 Sinclair Road, Columbus, OH 43229, 1–800–333–3333.

Northeast Region

April 5–6, 1989

Quality Inn Downtown Boston, 275 Tremont Street, Boston, Massachusetts 02116, (617) 426–1400.

Northwest Region

April 12, 13, 1989

Red Lion Inn, Jantzen Beach, Portland, OR, (503) 283–4466.

Time: Each workshop will begin on Day 1 at 1:00 p.m. and will end on Day 2 at 1:00 p.m.

Agenda Highlights include:

Day 1—Overview of the three Grant Announcements. Grant Submission Review/Award Process. General Principles of Prevention/Early Intervention. Lessons learned on High Risk Youth and Resiliency Factors.

Day 2—Technical/Practical Aspects of Grant Application Process including: completing forms, program narrative, budget justification, approach, method, management, and evaluation.

Status of Workshops: They are open to prospective OSAP grant applicants.

To receive a workshop registration form contact:

National Clearinghouse for Alcohol and Drug Information (NCADI) P.O. Box 2345, Rockville, MD 20852, Telephone: (301) 468–2600.

For more information about the technical assistance workshops contact: OSAP, Division of Demonstrations and Evaluation, Room 13 A 45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4564.

Purpose: In collaboration with the State Alcohol and Drug Authorities, the Office for Substance Abuse Prevention, Division of Demonstration/Evaluation and the Division of Prevention Implementation want to provide general assistance to prospective applicants in responding to the OSAP grant announcements.

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89–5775 Filed 3–13–89; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 89D–0022]

New Animal Drug Applications; Phased Data Submissions; Policy Guide; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a policy guide concerning the phased submission of specific data and information to be used to support approval of a new animal drug application (NADA). FDA's Center for Veterinary Medicine (CVM) has prepared a new section, Guide 1240.3040, to the CVM Policy and Procedures Manual (PPM), providing for the submission of data and information in advance of filing an NADA.

ADDRESSES: The new PPM section is available for public examination at the Dockets Management Branch (HFA–305), Food and Drug Administation, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday, except on legal holidays. Copies of PPM Guide 1240.3040 may be obtained from the Industry Information Branch (HFV–11), Center for Veterinary Medicine, Food and Drug Administration, Rm. 7–81, 5600 Fishers Lane, Rockville, MD 20857, by referring to the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Donald A. Gable, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1414.

SUPPLEMENTARY INFORMATION: CVM is instituting a policy to provide for the phased submission of specific data and information for review and evaluation by CVM prior to submission of an NADA for filing. This policy is intended to result in a more orderly and uniform system for review and evaluation of completed NADA components and subcomponents submitted to the notice of claimed exemption for an investigational new animal drug (INAD) during animal drug development. The data and information should be identified as a "PHASED DATA SUBMISSION" when submitted to the INAD exemption file. The new policy is detailed in PPM Guide 1240.3040. The program is voluntary.

Dated: March 6, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–5779 Filed 3–13–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89F–0065]

Purina Mills, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Purina Mills, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of formic acid as a preservative in animal feeds.

DATE: Written comments to be submitted by May 15, 1989.

ADDRESS: The environmental assessment prepared by the petitioner may be seen at, and written comments may be sent to, the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Woodrow M. Knight, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3390.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2211) has been filed by Purina Mills, Inc., P.O. Box 66812, St. Louis, MO 63166–6812, proposing that § 573.480 *Formic acid* (21 CFR 573.480) be amended to provide for the safe use of formic acid as a preservative in animal feeds. The petition would allow for the addition for formic acid to animal feed not in excess of 1.5 percent by weight of the complete animal feed as a preservative.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the rule in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: March 8, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–5778 Filed 3–13–89; 8:45 am]

BILLING CODED 4160–01–M

[Docket No. 87N–0034]

Drug Export Amendments Act of 1986; Biological Product Export Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a change of address to which persons should send applications to export an unlicensed human biological product under the Drug Export Amendments Act of 1986. The change of address is a

result of the reorganization of FDA's Center for Drugs and Biologics into two separate centers, namely, the Center for Biologics Evaluation and Research, and the Center for Drug Evaluation and Research.

ADDRESS: Applications (an original and two copies) for exporting human biological products may be mailed to Boyd Fogle, Jr., at the address below or may be delivered in person between 8 a.m. and 4:30 p.m, Monday through Friday, to Boyd Fogle, Jr., Center for Biologics Evaluation and Research, Rm. 217, 7520 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFB–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8191.

SUPPLEMENTARY INFORMATION: On November 14, 1986, President Reagan signed into law the Drug Export Amendments Act of 1986 (Pub. L. 99–660). The new law amends both the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*) and the Public Health Service Act (42 U.S.C. 262), to authorize the export from the United States to other countries for commercial marketing of unapproved new human drugs, unlicensed human biologicals, and unapproved new animal drugs. Under previous law, the export of such products for marketing was confined to those that were approved or licensed by FDA for domestic use.

The Drug Export Amendments Act of 1986 establishes three separate tracks for the export of products. Under each track, an application must be submitted to FDA and FDA approval obtained before export is permitted. The tracks vary considerably in terms of drug eligibility criteria, application requirements, and procedures for review and approval of export applications. The first track applies to applications to export unapproved new human drugs, unlicensed human biologicals, and unapproved new animal drugs to any of 21 countries listed in the act. (See section 802(b) through (e) of the act (21 U.S.C. 382(b) through (e)).) The second track applies to applications to export such unapproved and unlicensed products for use in the prevention or treatment of tropical diseases. (See section 802(f) of the act (21 U.S.C. 382(f)).) The third track applies to applications to export partially processed biological products for human use. (See section 351(h)(1)(A) of the Public Health Service Act (42 U.S.C. 262(h)(1)(A)).) A notice was published in the Federal Register of April 2, 1987 (52 FR 10633), listing mailing addresses for export applications.

Subsequently, FDA's Center for Drugs and Biologics was reorganized into two separate centers: the Center for Biologics Evaluation and Research (CBER), and the Center for Drug Evaluation and Research (CDER). This notice adddresses the application process for exporting unlicensed human biological products under the Drug Export Amendments Act of 1986.

Applications to export unlicensed human biological products (including partially processed biological products) should be mailed to Boyd Fogle, Jr. (address above), or delivered in person between 8 a.m. and 4:30 p.m., Monday through Friday, to Boyd Fogle, Jr., Center for Biologics Evaluation and Research, Rm. 217, 7520 Standish Pl., Rockville, MD 20855.

FDA is considering developing a comprehensive written guidance on the procedures to be followed in submitting export applications and on the content and format of such applications. Pending issuance of this guidance, questions about the content and format of export applications for biological products should be directed to Boyd Fogle, Jr.

This notice supplants the notice published in the Federal Register of April 2, 1987 (52 FR 10633), insofar as it applied to unlicensed human biological products. The April 2, 1987, notice remains applicable for mailing addresses for persons who wish to submit export applications for human or veterinary drugs.

Dated: March 6, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–5776 Filed 3–13–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89N–0081]

Drug Export; Hypaque® Meglumine 30% and 60%

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sterling Drug Inc., has filed an application requesting approval for the export of the human drug Hypaqué® Meglumine 30% and 60% to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFD–310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Sterling Drug Inc., 90 Park Ave., New York, NY 10016, has filed an application requesting approval for the export of the drug Hypaqué® Meglumine 30% and 60%, to Canada. This product is used as a radiopaque contrast medium. The application was received and filed in the Center for Drug Evaluation and Research on February 24, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 24, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (Sec. 802,

Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: March 8, 1989.

Sammie R. Young,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89–5777 Filed 3–13–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89E–0012]

Determination of Regulatory Review Period For Purposes of Patent Extension; Cytotec®

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Cytotec® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the time was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Cytotec (misoprostol) which is indicated for the prevention of NSAID-(nonsteroidal anti-inflammatory drugs, including aspirin) induced gastric ulcers in patients at high risk of complications from a gastric ulcer; e.g., the elderly and patients with concomitant debilitating disease, as well as patients at high risk of developing gastric ulceration, such as patients with a history of ulcer. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Cytotec® (U.S. Patent No. 3,965,143) from G. D. Searle & Co. and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated January 30, 1989, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the active ingredient, misoprostol, represented the first permitted commercial marketing or use either alone or in combination with other active ingredients. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Cytotec® is 3,729 days. Of this time, 2,015 days occurred during the testing phase of the regulatory review period, while 1,714 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* October 14, 1978. FDA has verified the applicant's claim that the investigational new drug application (IND) for Cytotec® became effective on October 14, 1978.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* April 19, 1984. The applicant claims that the new drug application (NDA) for Cytotec® (NDA 19–268) was initially submitted on April 12, 1984. However, FDA records indicate that the application was not received until April 19, 1984.

3. *The date the application was approved:* December 27, 1988. FDA has verified the applicant's claim that NDA 19–268 was approved on December 27, 1988.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before May 15, 1989, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before September 11, 1989, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 6, 1989.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 89–5878 Filed 3–13–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89E–0018]

Determination of Regulatory Review Period For Purposes of Patent Extension; Sandostatin®

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined

the regulatory review period for Sandostatin® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug products and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Sandostatin® (octreotide acetate) which is indicated for: control of symptoms in patients with metastatic carcinoid and vasoactive intestinal peptide-secreting tumors (VIPomas); symptomatic treatment of patients with metastatic carcinoid tumors where it suppresses or inhabits the severe diarrhea and flushing episodes associated with the disease; and treatment of the profuse watery diarrhea associated with VIP-secreting tumors. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Sandostatin® (U.S. Patent No. 4,395,403) from Sandoz, Ltd., and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated January 31, 1989, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the active ingredient, octreotide acetate, represented the first permitted commercial marketing or use either alone or in combination with other active ingredients. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Sandostatin® is 1,653 days. Of this time, 1,032 days occurred during the testing phase of the regulatory review period, while 621 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* April 14, 1984. The applicant claims that the investigational new drug application (IND) for Sandostatin® became effective on March 15, 1984. However, FDA records indicate that the IND became effective on April 14, 1984, 30 days after FDA received the IND application.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* February 9, 1987. The applicant claims that the new drug application (NDA) for Sandostatin® (NDA 19–667) was initially submitted February 6, 1987. However, FDA records indicates that FDA did not receive the application until February 9, 1987.

3. *The date the application was approved:* October 21, 1988. FDA has verified the applicant's claim that NDA 19–667 was approved on October 21, 1988.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Offices applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before May 15, 1989, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before September 11, 1989, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 6, 1989

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 89–5879 Filed 3–13–89; 8:45 am]

BILLING CODE 4160–01–M

Office of Human Development Services

Federal Council on the Aging; Meeting

Agency Holding the Meeting: Federal Council on the Aging

Time and Date: Meeting begins at 9:00 A.M. and ends at 5:00 P.M. on Monday, March 20, 1989 and beings at 9:00 A.M. and ends at 5:00 P.M. on Tuesday, March 21, 1988.

Place: On Monday, March 20, Boardroom 108, The Capitol Hill Hotel, 200 C Street, SE., from 9:00 a.m. to 5 p.m., and Tuesday, March 21, The Boardroom 108, The Capitol Hill Hotel, from 9:00 a.m..12:00 Noon, and from 2 p.m.–5 p.m., the Grand Hyatt Hotel, Washington, DC

Status: Meeting is open to the public.

Contact Persons: Pete Conroy, Room 4545, Wilbur Cohen Federal Building, 245–2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (Pub. L. 93–29, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 92–453, 5 U.S.C. App. 1, Sec. 10, 1976) that the Council will hold its March quarterly meeting on March 20 & 21 from 9:00 a.m.–5:00 p.m. and from 9:00 a.m.–5:00 p.m. respectively. On March 20, the morning session will be an Executive Session, and the regular open meeting in the afternoon in the Boardroom 108 of The Capitol Hill Hotel, 200 C Street, SE., Washington, DC 20003. On March 21, the Council will hold its regular meeting and then proceed to meet with the Secretary of Health and Human Services. From 2 p.m.–5 p.m. the Council will particpate in the American Society on Aging Forum on the 1991 White House Conference on Aging at the Grand Hyatt Hotel, Washington, DC.

The agenda for March 20 will include: Introduction of new members; discussion of Current Projects, Committee Reports, Agenda Projects and Budget for 1989–90, the 1988 Annual Report to the President and Recommendations included therein—location of 1989 meetings; Carol Fraser Fisk, Commissioner, Administration on Aging. On March 21 at 2 p.m., is as follows: Discussion of 1991 White House Conference on Aging at the Grand Hyatt Hotel in conjunction with the American Society on Aging Forum.

Dated: March 8, 1989.

Ingrid Azvedo,

Chairperson, Federal Council on the Aging.

[FR Doc. 89–5875 Filed 3–13–89; 8:45 am]

BILLING CODE 4130–01–M

National Institutes of Health

National Cancer Institute; Meeting (Cancer Center Support Review Committee)

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Center Support Review Committee, National Cancer Institute, National Institute of Health, March 30–31, 1989, Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

This meeting will be open to the public on March 30, from 8:30 a.m. to 9:30 a.m. to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on March 30, from approximately 9:30 a.m. to 6:00 p.m. and March 31, from 8:30 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301–496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. John Abrell, Executive Secretary, Cancer Center Support Review Committee, National Cancer Institute, Westwood Building, Room 834, National Institutes of Health, Bethesda, Maryland 20892 (301–496–9767) will furnish substantive program information.

Dated: March 3, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–5828 Filed 3–13–89; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of the Clinical Trials Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Clinical Trials Review Committee, National Heart, Lung, and Blood Institute, April 2–4, 1989, at the Raphael Hotel, 386 Geary Street, San Francisco, California 94102.

The Meeting will be open to the public on April 2 from 6:00 p.m. to approximately 7:30 p.m. to discuss administrative details and to hear a report concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d), of Pub. L. 92–463, the meeting will be closed to the public from approximately 7:30 p.m. on April 2 to adjournment on April 4 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A–21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. David M. Monsees, Jr., Contracts, Clinical Trials and Training Review Section, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, Westwood Building, Room 550B, Bethesda, Maryland 20892, (301) 496–7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: March 3, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–5829 Filed 3–13–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Meeting of Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases, on May 22, 23 and 24, 1989 at the Rocky Mountain Laboratories, Building 6, Conference Room 349, Hamilton, Montana 59840.

The meeting will be open to the public on May 22 from 9 a.m. until 12:30 p.m. and on May 23 from 8 a.m. to 9:30 a.m. During this open session, the permanent staff of the Laboratory of Pathobiology, the Laboratory of Microbial Structure, and the Laboratory of Persistent Viral Diseases will present and discuss their immediate past and present research activities.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting of the Board will be closed to the public on May 22 from 8:30 a.m. to 9 a.m., and from 12:30 p.m. until recess, on May 23 from 9:30 a.m. until recess and on May 24 from 8:30 a.m. until adjournment for review, discussion, and evaluation of individual intramural programs and projects conducted by the Rocky Mountain Laboratories, including consideration of personal qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would

constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. John I. Gallin, Executive Secretary, Board of Scientific Counselors, NIAID, National Institutes of Health, Building 10, Room 11C103, telephone (301–496–3006), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13–301, National Institutes of Health)

Dated: March 3, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–5830 Filed 3–13–89; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Meeting of the Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Library of Medicine, on May 1 and 2, 1989, in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 8:30 a.m. to 4 p.m. on May 1 and from 8:30 a.m. to approximately 12 noon on May 2 for the review of research and development programs of the Lister Hill National Center for Biomedical Communications. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(6), Title 5, U.S.C., and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on May 1, from approximately 4 to 5 p.m. for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute an unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Daniel R. Masys, Director, Lister Hill National Center for Biomedical Communications, National Library of Medicine, 8600 Rockville Pike, Bethesda Maryland 20894, telephone (301) 496–4441, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Date: March 3, 1989.

Betty J. Beveridge,

NIH Committee Management Officer, NIH.

[FR Doc. 89–5831 Filed 3–13–89; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Availability of Grants for Minority Community Health Coalition Demonstration Projects

AGENCY: Office of Minority Health/Office of the Assistant Secretary for Health, PHS, DHHS.

ACTION: Notice of availability of funds and request for applications under the Office of Minority Health's Program of Grants for Minority Community Health Coaliton Demonstration Projects.

SUMMARY: The Office of Minority Health announces the availability of grants to provide support, for a period which will not exceed two years, for projects which demonstrate methods of developing community health coalitions which can effectively promote disease risk factor reduction within minority populations.

FOR FURTHER INFORMATION CONTACT: See the names and addresses at item 8 at the end of this notice.

SUPPLEMENTARY INFORMATION:

Background

The Report of the Secretary's Task Force on Black and Minority Health identified six health problems that account for 80 percent of the excess deaths among minorities. Excess deaths are the difference between actual minority deaths and the number of deaths which would been expected if the minority population had the same age- and sex-specific death rates as the white population. Every minority group does not suffer from excess deaths in each category. However, the six health problems became priority issue areas for Task Force study. Listed in alphabetical order, they are:

- Cancer
- Cardiovascular disease and stroke
- Chemical Dependency
- Diabetes
- Homicide, Suicide, and Accidents (unintentional injuries)
- Infant mortality

HIV Infection

In recognition of the severity of the problem of HIV infection and Acquired Immunodeficiency Syndrome (AIDS) among the minority populations, Congress appropriated funds beginning in Fiscal Year 1988 for the Office of Minority Health to use in ways specifically targeted at HIV infection in minority populations. One mechanism by which the Office of Minority Health targeted this problem was to add HIV infection as a seventh health problem to the above list of topic areas for this demonstration grant program in Fiscal Year 1988. HIV infection continues to be one of the topic areas for this program in Fiscal Year 1989. For applicant organizations that plan to submit HIV infection demonstration applications, it is important to describe existing efforts in HIV infection education and prevention in their local community (e.g., by the local or State health department or community-based organization), and how the applicants' proposed interventions to prevent AIDS or HIV infection would complement those existing efforts. Applicants are encouraged to communicate with their State Departments of Health and Education, as appropriate.

Please note that these Minority Community Health Coalition Demonstration Projects are but one mechanism by which the Office of Minority Health intends to utilize its Fiscal Year 1989 appropriation for HIV infection. For more information on the Office of Minority Health's HIV infection initiative, please call Jacqueline Bowles, M.D., at (202) 245–0020.

The risk factors for these seven priority areas involve behavior or preventable conditions which are potentially modifiable but are in some cases resistant to change. In order to effect health behavior change, an individual must be motivated beyond that typically achieved as the result of health information or media campaigns alone. In addition, conventional health promotion activities are frequently not effective in reaching minority populations. It appears that change can be achieved by community-based information dissemination, awareness, support, and exhortation, particularly if such a community health campaign is carried out using familiar, as well as influential institutions such as churches and schools, and organized by recognized community leaders.

Moreover, in many cases it may be insufficient to simply pressure individuals to change behavior without offering positive alternatives. For example, if teens are being encouraged to avoid use and abuse of drugs and alcohol, it may also be important to organize and offer constructive alternatives such as career-oriented activities in non-traditional settings.

The following is a list of the major health problems with their associated modifiable risk factors, some of which

are implicated in more than one health problem:

Cancer: Tobacco, Diet, Alcohol, Environment.

Cardiovascular Disease and Stroke: Hypertension, Diet, Tobacco, Sedentary Life Style, Obesity.

Chemical Dependency: Direct Behavioral Outcome of Alcohol, and other Drugs of, Abuse.

Diabetes: Obesity, Diet.

Infant Mortality: Smoking, Alcohol, Drugs, Late or No Prenatal Care, Teen Pregnancy, Nutrition.

Homicide: Alcohol, Drugs, Poor Conflict Resolution Skills.

Suicide: Alcohol, Drugs, Depression.

Unintentional Injuries: Alcohol, Drugs, Environmental Hazards.

HIV Infection: Intravenous Drug Use, and High Risk Sexual Practices, (e.g., Unprotected Intercourse, with Multiple Partners).

Many of the above noted risk factors are of interest to, and within the purview of, a number of organizations within communities. In addition, community organizations have different and varying levels of influence over the behavior of individuals.

This announcement is the fourth annual notice for this grant program. In the past Fiscal Year 1988, the Office of Minority Health received 91 applications of which 39 were approved and seven (7) grants awarded for a total of $1.4 million. Fifty-two applications were disapproved because of various deficiencies. Several applications may have been in the approval range with some technical assistance. Others would have required much more work in the pre-application stage. Given the time and resources typically involved in researching, developing, and writing an application, potential applicants should seriously consider whether or not they should apply at this time or wait until they establish stronger linkages with other community organizations and/or develop greater expertise in planning and writing their proposal.

Applicants wishing to improve their chances for approval should pay particular attention to both the Supplemental and General Instructions provided with the grant application to ensure that their applications are responsive to each of the following concerns under the following headings:

Project Objectives

1. Clearly describe the goals and objectives of the proposed project, using measurable terms;

2. Identify, describe, and document health problems areas and related risk factors in the target population;

3. Include realistic timetables for accomplishing the objectives;

Target Population

4. Define the target population(s) and identify which interventions are proposed for which minority groups;

Coalition

5. Provide evidence that a valid community-based coalition exists or that organizations, which have worked together in the past, are now proposing to focus their energies on these disease risk reduction activities, and describe any coordinative or collaborative efforts with other organizations serving the target population;

6. Describe in detail the organization of the coalition and the respective roles of coalition members and other participants;

Intervention

7. Describe plans for implementing the intervention(s), presenting in step-by-step fashion the specific efforts to be undertaken by each key component of the coalition, and how these various efforts will address the problems identified;

8. Provide a detailed description of intervention strategies that address the board concept of the application rather than just an analysis of medical records of minority individuals, as in a limited clinical trail;

Project Management and Staffing

9. Provide detailed management plans that clearly delineate each coalition member's area of responsibility and how specified key staff of member organizations will be accountable for carrying out their responsibility;

10. Describe the duties and requisite qualifications of current staff, and of any staff and consultant positions to be filled after the grant award; and

11. Identify and provide supporting documentation (e.g., curriculum vitae) for each individual proposed for key staff positions to show appropriate experience and qualifications. Particularly suitable will be experience in community-based programs and/or health promotion programs, as well as related treatment and research experience.

Evaluation

12. In the evaluation section, specify the overall evaluation plans and the particular process and outcome objectives, indicating how each of these will be measured, including the results of the interventions.

Authority

This program is authorized under section 301 of the Public Health Service Act, as amended.

Program Objectives

The objectives of the program are to fund projects which:

(1) Provide epidemiological evidence of the health problem(s) and risk factor(s) of the minority population(s) which are the targets of the applicant's proposal.

(2) Provide detailed and specific methods for (a) risk factor reduction through the use of a community coalition targeted to a specific minority population and to identified risk factors and (b) measuring the results of the intervention.

(3) Demonstrate a sound organizational scheme for the coalition which assures adequate involvement and representation of both coalition members and community leaders.

(4) Evaluate the process of establishing and operating the coalition and how its activities will impact on the risk factors and health problem areas identified in the target population through the community coalition.

(5) Demonstrate experience of the applicant and some coalition members with community-based projects, either focused on health or other community concerns.

(6) Provide evidence of potential sources of community and other support for the project at the end of the grant period.

Definitions

For the purpose of this grant program, the following definitions are provided:

(1) *Health problem areas*—one of the seven priority issue areas identified in the Secretary's Task Force report or by the Office of Minority Health. They are: (a) Cancer; (b) cardiovascular disease and stroke; (c) chemical dependency; (d) diabetes; (e) homicide, suicide and unintentional injuries; (f) infant mortality; and (g) HIV infection.

(2) *Risk factors*—The environmental and behavioral influences capable of causing ill health with or without previous predisposition. The term "risk factor" is also used to denote an aspect of personal lifestyles and behavior known, on the basis of epidemiological evidence, to be associated with one or more diseases or health conditions considered important to prevent.

These include use of tobacco, poor dietary habits, obesity, severe emotional stress, depression, poor conflict resolution skills, abuse of alcohol and drugs, intravenous drug use, late or no

prenatal care, teen pregnancy, high risk sexual practices, (e.g., unprotected intercourse, with multiple partners), environmental hazards, and others.

(3) *Community*—A defined geographical area in which persons live, work, and recreate and is characterized by: a) formal and informal communication channels; b) formal and informal leadership structures for the purpose of maintaining order and improving their conditions; and c) its capacity to serve as a focal point for addressing societal needs including health needs.

(4) *Community coalition*—The coming together of individuals from and representatives of organizations and institutions in a community for the purpose of collaborating on specific community concerns, and seeking resolution of those concerns. For purposes of this grant program, community coalitions are characterized by the six elements listed below.

A community coalition

- Assumes a variety of interests converging on an agreed upon mission.
- Requires resource participation. Each coalition member organization brings a certain resource to the coalition to enable the coalition to accomplish its mission.
- Requires that each member organization has a specific role within the coalition. This rule, defined by the individual member, is distinctive among the other members. Use of resources may be one way of defining each role.
- Requires that each member organization establish both a relationship with the coalition as an entity (vertical relationship) and with other members of the coalition (horizontal relationship). Members must be able and willing to work with one another. Formalizing these relationships to make explicit the specified roles may be achieved through development of memoranda of understanding/agreement between each member organization and the coalition, and between members as necessary.
- Requires a long term commitment on the part of each member organization since the problem to be addressed is not usually amenable to short term solutions.
- Must document its activities to ensure a written history of and, thus, a continuity to its work that is not dependent upon the active participation of any single person. Such documentation can include the memoranda of understanding/agreement mentioned above.

(5) *Minority populations*—As defined by the Report of the Secretary's Task Force on Black and Minority Health, they include: Asian/Pacific Islanders, Blacks, Hispanics, and Native Americans/Alaska Natives (which include Native Hawaiians).

Availability of Funds

The Office of Minority Health intends to make available approximately $1.4 million under this announcement to be expended by grantees over a two-year project period. The specific amount funded will depend on the overall availability of funds. It is anticipated that seven individual grants of up to $200,000 (total costs including indirect costs) each for the two-year project period will be awarded from these funds. OMH hopes to award at least one of the seven grants in the area of HIV infection, with priority given to applications that target the Black or the Hispanic population. Such award, however, like all award decisions will be based on the types and quality of the applications received.

Applicant Eligibility

Eligible applicants are public and private nonprofit organizations and for-profit organizations *except for all current grantees under this program,* since these grantees are considered not eligible. The applicant organization is the lead agency for the coalition and is responsible for management of the Project and will serve as the fiscal agent for the Federal funds awarded.

Federal domonstration grant support is not expected to result in more than one award in any Standard Metropolitan Statistical Area (SMSA) unless an additional project in an SMSA was to be targeted to another of the four major minority groups—Asian/Pacific Islanders, Blacks, Hispanics, and Native Americans/Alaska Natives. Efforts will be made to achieve geographic and ethnic distribution of awards as well as cover the various health problems identified above. There is no lower limit for the size of the population targeted by the applicant, but there must be a reasonable relationship between the level of effort involved in the coalition and the size of the target population and the health problem(s) to be addressed. Similarly, the geographic distribution of the target population must be such that effecting risk factor reduction is feasible.

The target risk factor(s) must be epidemiologically justified on the basis of health problem patterns in the population. It is suggested that applicants limit the number of disease or health problem areas to a primary one with one secondary problem area (with their associated risk factors) on which a coalition plans to focus, as opposed to being all-inclusive, in order to maximally utilize resources to achieve the greatest reduction in the selected risk factor(s).

Applications

1. Copies

The forms used for applying for grants under this program are either Form PHS 5161–1 for State and local governments or Form PHS 398 for all others. Copies of the application kit may be obtained from the OMH-Coalition Grant Office, 8201 Greensboro Drive, Suite 600, McLean, VA 22102.

2. Deadlines

The deadline for receipt of applications is 5:30 p.m. (EST) on May 31, 1989. Applications will be considered as meeting the deadline if they are either:

(1) Received at the above address on or before the deadline date, or

(2) Sent to the above address on or before the deadline date and received in time for orderly processing.

(Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be accepted as proof of timely mailing.)

3. Late Applications

Applications which do not meet the criterion in paragraph 2 immediately above will be considered late applications and will be returned to the applicant.

4. Reviews

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs. Applications for funding will be subject to State review. All comments from a State office must be received by 60 days after the due date by the program grants management office. Applicants should contact State Single Points of Contact (SPOC) early in the application preparation process. A list of addresses of the SPOCs is enclosed with the application material.

5. Project Budget

Funds may be used to cover the cost of personnel to coordinate the coalition's activities, for consultants, support services and materials. Funds may not be used for building construction costs or building alterations and renovations. Also, funds may not be used to purchase equipment

except as may be acceptably justified in relation to conducting the project.

6. Cost Participation

It is expected that a portion of the program's costs will be borne by coalition members or by other non-federal sources such as business, labor, local government, or community funds. Cost participation for those grants awarded in FY 1988 ranged between $40,000 and $289,000, and was either in-kind or direct funds contributions.

7. Review Criteria

Applications will be reviewed and evaluated in terms of the evidence presented in the application regarding the ability of the applicant to meet program objectives. Of specific importance will be the following criteria under the listed headings. (An indication of the quantitative weight appears in parentheses after each heading.):

Project Objectives (50%)

- The scientific and technical merit of the described proposed project, and the consistency of the project's goals and objectives with those of the Demonstration Grant Program and the Office of Minority Health.
- The justification for the choice of disease(s) and risk factor(s) to be targeted, and their direct relationship to the epidemiologic characterization(s) of the target minority population(s).
- The degree to which the composition of coalition members is a logical choice based on target population, target risk factor(s) and intervention(s) to be demonstrated.
- The degree of commitment of each coalition member to the coalition and to the proposed implementation plan, including the amount or extent of support indicated by coalition members to cover a portion of project needs.
- Coherence, feasibility, and realistic approach of the intervention strategy and of the implementation methods described. The specificity of the methods to address the target risk factor(s) in the target population(s) will be given significant weight in the review of the application.

Project Management and Staffing (25%)

Adequacy of qualifications and time allocations of proposed regular staff, both paid and voluntary, and of the proposed program and technical management of the project. Appropriateness of relevant experience and qualifications of the managers of the applicant organization to provide administrative and fiscal management of the grant.

Evaluation (25%)

Appropriateness of the process and outcome objectives, and adequacy of the evaluation plan to measure the development of the coalition as well as indicators and trends of outcome changes based on the goals and objectives of the application. Likelihood that the project will demonstrate whether or not community health coalitions can effectively promote risk factor reduction among minority populations. Likelihood that the project will continue beyond the two year funded project period.

8. Information and Technical Assistance Contacts

Information on application procedures and copies of application forms may be obtained from the OMH-Coalition Grants Office, 8201 Greensboro Drive, Suite 600, McLean, VA 22102 (phone 703/821-2487).

Technical assistance on the programmatic content of the application may be obtained from Betty Lee Hawks, Office of Minority Health, Room 118-F, HHH Bldg., Washington, DC 20201 (telephone 1-800-444-6472 or 202/245-0020). For additional information on the OMH AIDS Program, please contact Jacqueline Bowles, M.D., at the same address and telephone number.

The Catalog of Federal Domestic Assistance Number for the program is 13.137.

Dated: February 20, 1989.

Samuel Lin,

Acting Director, Office of Minority Health.

[FR Doc. 89-5710 Filed 3-13-89; 8:45 am]

BILLING CODE 4160-17-M

Pesticide Monitoring Improvements Act of 1988; Delegations of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Health, with authority to redelegate, the authorities vested in the Secretary under sections 4702, 4703, and 4704 of the Pesticide Monitoring Improvements Act of 1988 (21 U.S.C. 1401-1403) relating to pesticide monitoring and enforcement information, foreign pesticide information, and pesticide analytical methods. This delegation excludes the authority to submit reports to Congress.

This delegation became effective upon date of signature.

February 28, 1989.

Don M. Newman,

Acting Secretary.

[FR Doc. 89-5880 Filed 3-13-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF INTERIOR

Bureau of Land Management

[AZ-010-09-4322-02; 1784-010]

Arizona Strip District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Arizona Strip District Grazing Advisory Board will meet Thursday, April 6, 1989 at 9 a.m. in the Holiday Inn, 850 South Bluff Street in St George, Utah. Primary topics on the agenda are the Arizona Strip resource management plan and range improvements.

FOR FURTHER INFORMATION CONTACT: G. William Lamb, District Manager, Arizona Strip District, 390 North 3050 East, St. George, Utah 84770 (Phone 801/673-3545).

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Any person may attend, file a written statement by mail, or appear before the Board at 9:30 a.m.

G. William Lamb,

Arizona Strip District Manager.

Date: March 6, 1989.

[FR Doc. 89-5769 Filed 3-13-89; 8:45 am]

BILLING CODE 4132-32-M

[AZ-010-09-4410-08; 178-010]

Arizona Strip District Advisory Council; Meeting and Field Tour

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting and field tour.

SUMMARY: A meeting and field tour of the Arizona Strip District Advisory Council will occur April 12-13, 1989. The Council will meet at the Wahweap Lodge and Marina, 100 Lake Shore Drive, Page, Arizona at 8 a.m. to discuss the district resource management plan. At 1 p.m. the Council will visit the Ferry Swale area and review management options being considered in the plan. On Thursday the Council will continue its meeting in the Wahweap Lodge.

FOR FURTHER INFORMATION CONTACT: G. William Lamb, District Manager, Arizona Strip District, 390 North 3050 East, St. George, Utah 84770 (Phone 801/673-3545).

SUPPLEMENTAL INFORMATION: The tour and meeting are open to the public, but the public must provide their own transportation. Interested persons may make oral statements at 8:30 a.m.

Thursday or file written statements for the Council's consideration.

G. William Lamb,

Arizona Strip District Manager.

Date: March 6, 1989.

[FR Doc. 89-5770 Filed 3-13-89; 8:45 am]

BILLING CODE 4132-32-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31408]

Carolina Coastal Railway, Inc., Lease and Operation and Acquisition Exemption; Southern Railway Co.

Carolina Coastal Railway, Inc. (CCR) has filed a notice of exemption to lease (with option to purchase) [1] and operate a line of railroad owned by Southern Railway Company. The line extends between Pinetown (milepost BH-0.00) and Belhaven (milepost BH-17.00), in Beaufort County, NC, a distance of 17 miles. The transaction was expected to be consummated February 14, 1989.

CCR must preserve intact all sites and structures more than 50 years old until compliance with the requirements of Section 106 of the National Historic Preservation Act, 16 U.S.C. 470 is achieved. *See Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901,* 4 I.C.C.2d 305 (1988).

Any comments must be filed with the Commission and served on: Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: March 8, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-5816 Filed 3-13-89; 8:45 am]

BILLING CODE 7035-01-M

[1] CCR has the option to purchase the line anytime after the end of the second lease year. This notice of exemption extends to the prospective purchase of this line by CCR, thus obviating the need for CCR to file a separate notice of exemption in the future covering that transaction, should CCR exercise its option to purchase.

[Docket No. AB-290 (Sub-No. 55X)]

Norfolk and Western Railway Co.—Abandonment Exemption—Between Solon and Chagrin Falls, OH

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 6.25-mile line of railroad between milepost CH-1.90 at Solon, OH, and milepost CH-8.15 at Chagrin Falls, OH.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 13, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by March 24, 1985.[3]

Petitions for reconsideration and request for public use conditions under 49 CFR 1152.28 must be filed by April 3, 1989, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Roger A. Petersen, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by March 17, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 28, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-5691 Filed 3-13-89; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in these proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Application; McNeilab Inc.

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal

Regulations (CFR), notice is hereby given that on January 24, 1989, NcNeilab Inc., DBA First State Chemical Company, Inc., 803 East Fourth Street, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Raw opium (9600)	II
Concentrate of poppy straw (9670)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such forms as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than April 13, 1989.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: March 3, 1989.

[FR Doc. 89–5772 Filed 3–13–89; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application; McNeilab Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 24, 1989, McLeilab Inc., DBA First State Chemical Comany Inc., 803 East Fourth Street, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than Apirl 13, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: March 3, 1989.

[FR Doc. 89–5773 Filed 3–13–89; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Ganes Chemical Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 5, 1989, Ganes Chemicals, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Methadone (9250)	II
Methadone-Intermediate 4-cyano-2-dimethylamino-4, 4-diphenyl butane (9254)	II
Bulk dextropropoxyphene (non-dosage forms) (9273)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than April 13, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: March 2, 1989.

[FR Doc. 89–5774 Filed 3–13–89; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL COMMUNICATIONS SYSTEM

Federal Telecommunications Standards; Inquiry

AGENCY: National Communications System, Office of Technology and Standards.

ACTION: Notice.

SUMMARY: The Federal Telecommunication Standards Committee's (FTSC) Land Mobile Radio (LMR) Subcommittee is currently working toward a new Federal standard (Fed Std 1044) for Government LMR trunked radio systems. The purpose of this notice is to invite interested organizations to propose candidate trunked radio system solutions that will enable the Government to draft a proposed standard providing needed features and capabilities.

DATE: Initial proposals should be received by May 15, 1989.

ADDRESS: Send comments to the National Communictions System, Attn: Office of Technology and Standards, Washington, DC 20305–2010.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Fenichel, National Communications System, Telephone (202) 692–2124.

SUPPLEMENTARY INFORMATION:

1. While proposals may be proprietary, the text of a draft standard (containing all interoperability-related requirements) must be publically disclosed upon solicitation of industry comment on the draft standard. In addition, all patents needed to implement the requirements of the

standard must be offered for license on a non-exclusive basis at reasonable rates (as is required for American National Standards Institute (ANSI) and International Telegraph and Telephone Consultitive Committee (CCITT) standards).

2. There are presently two public-safety trunked radio system techniques being offered for sale to the Federal Government. Proposed techniques should be capable of sufficient flexibility to include most, if not all, of the features offered by these two systems. Both of the public-safety trunked radio system manufacturers have been unwilling to disclose their techniques and license patents as described above.

3. Some features and performance characteristics felt to be very desirable are:

a. Ability to assign channels to users employing 25 kHz channel analog voice, 12.5 kHz channel analog voice, 25 KHz channel digitized voice or data, 12.5 kHz channel digitized voice or data, and 6.25 kHz digitized voice or data.

b. Ability to support a 20-channel LMR trunked radio system with one 12.5 kHz or less trunked radio system control channel, while providing a range equal to that of 25 kHz channel analog voice.

c. Ability to support a 20-channel system channel-loading in the same range as the two presently offered public-safety trunked radio system techniques, with response time and other requirements specified in APCO Project 16 documents.

d. Ability to operate in a network mode, individual-to-individual mode, and a telephone interconnect mode.

4. While candidate trunked radio systems proposals are desired, other alternative suggestions (e.g. development under Government funding) will be considered.

Dennis Bodson,

Assistant Manager, NCS Technology and Standards.

[FR Doc. 89-5882 Filed 3-13-89; 8:45 am]

BILLING CODE 3610-05-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Professional Development Section) to the National Council on the Arts will be held on April 6, 1989, from 9:00 a.m.—5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

March 8, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations National Endowment for the Arts.

[FR Doc. 89-5820 Filed 3-13-89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Regional State Liaison Officers' Meeting

On April 11 and 12, 1989, the Nuclear Regulatory Commission (NRC) will sponsor a regional meeting with the Governor-appointed State Liaison Officers from Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont and the representative from the District of Columbia. The subjects which will be discussed include State cooperation, power plant licensee performance, decommissioning, radioactive material safety issues, as well as other items of mutual regulatory interest.

The meeting will be conducted at the NRC Region I Office, 475 Allendale Road, King of Prussia, Pennsylvania. The meeting is open to the public for attendance and observation and will take place from 8:30 a.m. until 5:15 p.m. on Tuesday, April 11, and from 8:00 a.m. until 12:00 noon on Wednesday, April 12, 1989.

Questions regarding this meeting should be directed to Marie Miller, at (215) 337-5246.

Dated at King of Prussia, Pennsylvania, this March 8, 1989.

For the Nuclear Regulatory Commission.

William T. Russell,

Regional Administrator.

[FR Doc. 89-5824 Filed 3-13-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Small Business Competitiveness Demonstration Program; Policy Directive

AGENCY: Office of Federal Procurement Policy (OFPP) Small Business Administration (SBA).

ACTION: Interim policy directive amendment.

SUMMARY: In the Federal Register of December 29, 1988, (53 FR 52869) OFPP and SBA published an Interim Policy Directive and Test Plan implementing Title VII of the "Business Opportunity Development Reform Act of 1988", which establishes the Small Business Competitiveness Demonstration Program. Paragraph III.A.2.d of the directive stated that non-nuclear ship repair (one of the four industry groups covered by the demonstration program) currently was not individually segmented from the shipbuilding and ship repair industry, but that SBA would segment the industry and an appropriate Federal Procurement Data System (FPDS) service code would be provided for reporting purposes. SBA now has completed the segmentation of the shipbuilding and ship repair industry, and OFPP and SBA are amending the interim policy directive to include appropriate FPDS service codes for non-nuclear ship repair.

FOR FURTHER INFORMATION CONTACT: Karen Maris, Deputy Associate Administrator, (202) 395-3300.

1. Paragraph III.A.2.d., is amended to read as follows:

d. Non-nuclear ship repair—Ship repair (including overhauls and conversions) performed on non-nuclear propelled and nonpropelled ships under SIC code 3731, limited to FPDS service codes J998 (repair performed east of the 108th meridian) and J999 (repair performed west of the 108th meridian).

2. Paragraph IV.B.3., is amended to read as follows:

3. Non-nuclear Ship Repair

Non-nuclear ship repair is included within SIC 3731. Since this SIC includes all ship repair as well as shipbuilding, participating agencies shall use the following FPDS service codes to monitor goal attainment for non-nuclear ship repair: J998 (Ship Repair (Including Overhauls and Conversions)

Performed on Non-nuclear Propelled and Nonpropelled Ships East of the 108th Meridian) or J999 (Ship Repair (including Overhauls and Conversions) Performed on Non-nuclear Propelled and Nonpropelled Ships West of the 108th Meridian).

3. Attachment B is amended by adding in "IV. Non-nuclear Ship Repair," under the heading "Designated Groups,":

SIC 3731:
PSC J998
PSC J999

Allan V. Burman,

Deputy Administrator and Acting Administrator, Office of Federal Procurement Policy.

Monika Edwards Harrison,

Associate Administrator for Procurement Assistance, Small Business Administration.

[FR Doc. 89-5873 Filed 3-13-89; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26604; File No. SR-Amex-87-33]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to Telephone Access to the Floor

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 16, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

This filing is Amendment No. 1 to SR-Amex-87-33, a proposed rule change originally filed by the Amex on December 30, 1987, that would allow members to establish direct telephone communications between the Floor and non-members located off the Floor, and to reflect more fully the Amex's existing telephone policy.[1] This amendment would modify Commentary .01 to Amex Rule 220 to provide that the Amex will not permit members to use a portable telephone on the Exchange floor.[2]

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

As noted in the original notice of the proposed Amex rule change, the purpose of the proposal is to codify all current Exchange policies relating to communications with the Trading Floor of the Exchange. Amendment No. 1 reflects a modification to these policies. In the original notice of the proposed rule change published in the **Federal Register** [3] the Commission noted that, unlike the NYSE rule change,[4] the Amex proposal did not specifically address portable telephones. This amendment to the proposed rule change would add a prohibition against the use of portable telephones or other portable communication devices on the Floor which would permit direct voice communication between members and non-members.

Portable telephones would enable a non-member to communicate directly with a member in the trading crowd, thereby providing the non-member with "live" access to the very point of trade. In Amex's view, not only is such access an essential privilege of membership, but Exchange Rule 3(b) prohibits members from effecting transactions on the Exchange directly with non-members. A portable telephone in the crowd could afford a non-member the actual ability to trade in the crowd.

The use of portable telephones on the Trading Floor may also serve to perpetuate in the public mind doubts about the extent to which small investors are on an equal footing with larger, more active customers.

In addition, non-member telephone access to the booths is predicated on full compliance with recordkeeping and other applicable rules related to maintaining a customer business. These requirements would be difficult to comply with, and to surveil, when portable telephones are used.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if its finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed

[1] The Commission originally published notice of the proposed rule change in Securities Exchange Act Release No. 25287, January 22, 1988, 53 FR 2555.

[2] The Commission approved a similar proposed rule change by the New York Stock Exchange, Inc. ("NYSE") that permits members to have telephones installed in their booths on the NYSE floor to enable them to communicate with non-members located off-floor. The rule also prohibits member from using a portable telephone on the NYSE floor. *See* Securities Exchange Act Release No. 25842, June 23, 1988, 53 FR 24539). The Commission's approval of the NYSE's ban on portable telephones was recently upheld in a January 20, 1989, decision by the United States Court of Appeals for the Second Circuit. *See Higgins v. Securities and Exchange Commission*, Docket No. 88-4115.

[3] *See* note 1, *supra*.

[4] *See* note 2, *supra*.

rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, at the above address. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–Amex–87–33 and should be submitted by April 4, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 7, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–5796 Filed 3–13–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26610; File No. SR–CBOE–89–05]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Risk Analysis Procedures

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on February 24, 1989, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Rule 15.7 Risk Analysis of Market Maker Accounts

(a) Each member organization which clears on guarantees the transactions of options market makers pursuant to Exchange Rule 8.5, shall establish and maintain written procedures for assessing and monitoring the potential risks to the member organization's capital over a specified range of possible market movements of positions maintained in such options market maker accounts and such related accounts as the Exchange shall from time to time direct. Current procedures shall be filed and maintained with the Department of Financial Compliance. The procedures shall specify the computations to be made, the frequency of computations, the records to be reviewed and maintained and the positions(s) within the organization responsible for the risk function.

(b) Upon direction by the Department of Financial Compliance, each affected member organization shall provide to the Department such information as the Department may reasonably require with respect to the member organization's risk analysis for any or all of its options market maker accounts.

Interpretations and Policies . . .

.01. Each affected member organization shall at a minimum assess and monitor its own potential risk of loss from options market maker accounts each business day as of the close of business the prior day through use of an Exchange approved computerized risk analysis program. The program shall comply with at least the minimum standards specified below and such other standards as from time to time may be prescribed by the Exchange in written memoranda to all affected member organizations:

(i) The estimated loss to the clearing member organization for each market maker account (potential account deficit) shall be determined given the impact of broad market movements in reasonable intervals over a range from negative 15% to positive 15%.

(ii) The member organization shall calculate volatility using a method approved by the Exchange, with volatility updated at least weekly. The program must have the capability of expanding volatility when projecting losses throughout the range of broad market movements.

(iii) Options prices shall be estimated through use of recognized options pricing models such as, but not limited to, Black-Scholes and Cox-Reubenstein.

(iv) At a minimum, written reports shall be generated which describe for each market scenario: the projected loss per options class by account; the projected total loss per options class for all accounts; the projected deficits per account and in aggregate.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

As the result of the October, 1987 market break, the Exchange established a task force to review procedures and practices of options market-maker clearing firms. One result of this review was a determination that minimum risk analysis standards should be established to enable all Exchange market maker clearing firms to project their potential losses for all accounts given specific market movements and/or changes in volatility.

This proposed rule would require all Exchange market maker clearing firms to file with the Exchange written procedures for assessing and monitoring the risk to the clearing firm of maintaining positions in its own market maker accounts and those of independent market makers for whom it performs clearance and guarantee functions. These procedures would include, but not be limited to, an Exchange approved computerized risk analysis program, which would, given certain parameters, enable the clearing firm to assess its potential exposure over a specified range of possible market movements.

The rule would require risk analysis to be conducted daily as of the close of business the prior day, and would provide for the submission to the Exchange of certain risk analysis documentation as requested by the Department of Financial Compliance ("Department") on a routine or "as needed" basis.

The Exchange is designated by the Commission as the examining authority for fifteen of the eighteen Exchange member organizations which clear and guarantee the accounts of options market makers. The Exchange believes that the majority of these firms, including those designated to other self-regulatory organizations, would currently be in a position to comply with the proposed rule. However, to allow for all affected members to adequately prepare, the Exchange recommends an effective date four months from the date of approval.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder; in particular, the proposed rule change is consistent with section 6(b)(5) of the Act because it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with

respect to, and facilitating transactions in securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

In June, 1988 all options market maker clearing organizations were advised of the decision to require minimum risk analysis procedures and that a pilot program including four (4) clearing firms had been instituted to assist in the development of minimum standards. The draft rule proposal resulting from the pilot program was distributed on November 17, 1988 for review and comment to all Exchange member organizations which clear options market maker accounts. In addition to the four firms which participated in the pilot, the Department reviewed the procedures of two additional clearing firms, which contacted the Department in response to the November circular. No negative comments have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 4, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 8, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-5691 Filed 3-13-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26611; File No. SR-NASD-88-53]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Filling Vacancies on District Business Conduct Committees

The National Association of Securities Dealers, Inc. ("NASD") submitted a proposed rule change on November 29, 1988, and an amendment thereto on February 14, 1989,[1] pursuant to section 19(b) of the Securities Exchange Act of 1934 [2] ("Act") and Rule 19b-4 [3] thereunder to amend Article VIII, section 5 of the NASD By-Laws to provide that vacancies created by the departure of a member of a District Business Conduct Committee ("DBCC") during his or her term [4] may be filled by the remaining DBCC members by the appointment of a new member to serve until the next regularly scheduled election.[5]

Notice of the proposed rule change together with the substance of the terms of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 26407, December 29, 1988) and by publication in the Federal Register (54 FR 342, January 5, 1989). No comments were received regarding the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, with the requirements of Section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change, SR-NASD-88-53, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

March 8, 1989.

[FR Doc. 89-5692 Filed 3-13-89; 8:45 am]

BILLING CODE 8010-01-M

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[1] On February 14, 1989, the Commission received a letter from the NASD (dated February 10, 1989) providing the results of membership vote pertaining to this rule filing (2,137 members approved, 147 disapproved and 10 members did not vote). This letter constitutes Amendment No. 1 and is available for inspection and copying in the Commission's public reference room.

[2] 15 U.S.C. 78s(b)(1) (1982).

[3] 17 CFR 240.19b-4 (1988).

[4] DBCC members normally serve 3 year terms.

[5] The NASD published the proposed amendment for comment in Notice to Members #88-48 (July 1988), and received three comment letters in response thereto. One commentator favored the proposed amendment because it would result in more efficient operation of the DBCC's. This commentator suggested that previous DBCC members should be considered first in selecting replacements.

Two commentators opposed the proposed amendment. One stated that elections are not too expensive and that the present system affords more members a chance to serve on a DBCC. The NASD's response to this comment was that any additional election is costly, both in terms of money and disruption of the DBCC's affairs. Furthermore, the proposed rule change would allow just as much opportunity, if not more, for different parties to serve on a DBCC. Since any appointment would be effective only until the next regularly scheduled election it is possible that two different persons could serve in the position—one by appointment and one by election.

Another negative comment was that vesting appointment power in sitting DBCC members would result in appointees who are obligated to their committees and not to their districts. The NASD, however, has not encountered this problem; in the past, interim appointees have maintained their independent judgment. The NASD states that the diverse composition of DBCCs makes it unlikely that a standard view will develop to which an appointee must adhere.

One commentator suggested that the Nominating Committee should select a candidate from the list of those originally considered for the position. The membership should then have a chance to file written objections and if many such objections are filed, an election should be held. The NASD, however, believes that this would be just as disruptive to DBCC business because additional elections would have to be held.

[Release No. 34-26619; File Nos. SR-NYSE-88-39 Amendments Nos. 1 and 2 and SR-NYSE-88-40 Amendment No. 1]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Listing Standards for Constituent Securities of Common Stock and Meaning, Administration or Enforcement of Rule 19c-4 with Respect to Constituent Securities of Common Stock such as Unbundled Stock Units

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 17, 1989 and March 7, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") amendments to the proposed rule changes as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the amendments to the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On December 9, and December 20, 1988, the NYSE filed proposed rule changes with the Commission to establish listing criteria for new securities consisting of two or more constituent securities which, in the aggregate, are designed to replicate the economic characteristics of shares of a class of outstanding stock (NYSE-88-39) and to provide an exception from paragraph (c)(3) of Rule 19c-4 under the Act regarding the meaning, administration, or enforcement of Rule 19c-4 with respect to constituent securities of common stock, such as Unbundled Stock Units (NYSE-88-40). Amendment No. 1 to NYSE-88-39 revises the proposed listing standards set forth therein to include, among other things, a new minimum holder requirement for units and constituent securities in addition to new minimum total assets and net worth requirements for issuers seeking to list the securities on the NYSE. The amendment provides that in order for the units and their constituent securities to qualify for Exchange listing, there must be at least 250 holders of the units and the issuer must have total assets in excess of $100 million and a net worth that exceeds $18 million dollars.

The second amendment to the filing proposes a new rule, Rule 405A (Suitability Requirements for Transactions in Unbundled Stock Units), which will require NYSE members and member organizations to explain the characteristics of the units and the constituent securities to investors and to determine the suitability of any recommended transactions in the units and constituent securities. In particular, the proposed rule provides that when a NYSE member or member organization recommends a transaction in units or constituent securities to a customer, the member or member firm must make a determination as to the products suitability for such customer and must have a reasonable basis for believing that the customer has sufficient knowledge and experience in financial matters to be reasonably expected to be capable of evaluating the risks and the special characteristics of the recommended transaction and is financially able to bear the risks of any of the constituent securities.

Amendment No. 1 to NYSE-88-40 amends the text of the rule change set forth in the Original Filing, Item I *Text of the Proposed Rule Change.*[1]

In summary, the revised rule replaces the original third subparagraph with language that:

—Reduces the total amount of shares that may be subject to an exchange offer from 25% to 20%.

—Defines insider and control groups and provides further clarification on the determination of whether an exchange offer enhances the standing or voting control of such groups.

The revised rule also sets forth an additional consideration which addresses the collective action problems (discussed in the Release of the SEC that accompanied the adoption of the Rule) contained in the second paragraph of the Exchange's rule.

Finally, definitional language has either been modified or added to address the characteristics of the units and the terms used relating to "person," "officer," and "beneficial ownership" as defined in the Securities Exchange Act of 1934 and SEC rules.

The text of the amended rule with deletions shown in brackets and additions shown in italics is printed in full below:

(a) This proposed rule change consists of a stated policy or interpretation of Rule 19c-4 (the "Rule") under the Securities Exchange Act of 1934 (the "Act") and establishes or changes a standard or guideline with respect to the meaning, administration or enforcement of the Rule. This proposed rule change reads as follows:

Notwithstanding the provisions of Rule 19c-4(c)(3), the Exchange may determine that it will not proceed to delist the equity securities of a company because that company has issued or proposes to issue in an exchange offer for outstanding shares of its common stock units and their constituent securities which have no vote or a lesser vote than its outstanding common stock where the Exchange, after considering all the surrounding circumstances, including other action that may have been taken or is proposed to be taken by the company, determines that the exchange offer does not (or did not) give rise to the collective action problems discussed in the Release of the SEC that accompanied the adoption of Rule 19c-4, is not (or was not) coercive in nature and does not (or did not) have the effect of disenfranchising outstanding common stock holders.

For example, if the Exchange determines that the exchange offer,

- does not depend on a shareholder vote but is available for the individual choice of all outstanding common stock holders in fair and nondiscriminatory manner,
- is accompanied by a prospectus under the Securities Act of 1933 (or a comparable disclosure document) that describes the exchange offer and the securities being offered,
- is not an exchange offer which, either alone or in the aggregate with prior similar exchange offers, is for more than 20% of the outstanding common stock of the company as of the date of the filing of a registration statement (or the mailing of a comparable disclosure document) relating to the first such offer, and on the date immediately prior to the date the registration statement is filed (or the comparable disclosure document is mailed) relating to the exchange offer to be made:

(a) The company does not have knowledge, within the meaning of Item 403(a) of Regulation S-K of the SEC, that any person (except any person who is a bank as defined in Section 3(a)(6) of the Act, an investment adviser registered under Section 203 of the Investment Advisers Act of 1;940, [to the extent such bank or investment adviser holds such securities as a financial intermediary on behalf of customers and not for its own account] or an employee benefit plan, or pension fund which is subject to the provisions of the Employee Retirement Income Security Act of 1974), is the beneficial owner of more than five percent of any class of the company's voting equity securities, and (b) officers and directors of the company, and any employee benefit plan or pension fund of the company, as a group, do not beneficially own more than 10 percent of any class of the company's voting equity securities, unless, on the date shares of common stock are accepted for exchange in the exchange offer and after giving effect thereto, the percentage of the class of voting equity securities beneficiary owned (1) by any person included in clause (a) and (2) by the group included in clause (b), as the case may be, is not

[1] Minor technical language changes were made to Amendment No. 1 in a letter to Howard Kramer, Division of Market Regulation, SEC, from Vince W. Plaza, Listing & Compliance, NYSE, dated March 9, 1989.

increased above the percentage beneficially owned by such person or group immediately prior to the filing of such registration statement (or the mailing of such disclosure statement), and

• does not adversely affect the voting rights of the holders of outstanding common stock that do not accept the exchange, then the exchange may conclude that the exchange offer is not inconsistent with Rule 19c–4.

In addition, the Exchange will also consider all relevant factors, including whether the proposed exchange offer is made in conjunction with, or as one of a series of, transactions the effect of which is to create or enhance the standing of an insider or control group.

The term 'units' as used herein shall mean unbundled stock units or securities with substantially similar characteristics issued by a corporation which consist of, and are separable into, two or more constituent securities, which, in the aggregate, [are designed to replicate the economic characteristics] *provide economic characteristics substantially similar to those* [2] typically associated with ownership of the corporation's common stock and have a term in excess of three years. The term 'constituent securities' as used herein shall mean the two or more constituent securities which together make up the unit.

For the purposes hereof, "person" shall have the meaning set forth in Section 3(a)(9) of the Act and shall include any group as that term is defined in Section 13(d)(3) of the Act; "officer" shall have the same meaning as that term is used in Items 201(b)(2)(iii) and 403(b) of Regulation S–K of the SEC; and "beneficial ownership" of voting equity securities of the company shall be determined in accordance with Rule 13d–3 and Item 403 of Regulation S–K of the SEC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the place specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

(1) Purpose

In recent months, some publicly traded corporations have announced plans to issue a new type of security consisting of two or more constituent securities which, in the aggregate, are designed to replicate the economic characteristics typically associated with ownership of shares of a class of outstanding stock of the corporation. Thus, a corporation might issue a unit consisting of, for example, several constituent securities, each of which is separable from the others and may trade by itself or in combination with one or all of the other constituent securities. This approach may permit investors to separate their securities holdings into distinct trading components representing discrete interests in the income and capital appreciation potential of the securities involved.

The securities may include, but are not limited to, any combination of the following:

- Common stock
- Preferred stock
- Warrants
- Debt securities

Proposed Rule 405A requires members and member organizations to afford an explanation of the unique characteristics of unbundled stock units to investors interested in trading the units and constituent securities. When recommending a transaction to a customer in the units or constituent securities, a member or member organization must make a determination as to its suitability, must have a reasonable basis for believing that the customer has the knowledge and experience in financial matters to be reasonably expected to be capable of evaluating the risks of the recommended transaction and must be financially able to bear the risks of the constituent securities.

In addition, the Exchange reviewed its proposed rule, as set forth in NYSE–88–40, within the context of the public commentary received by the Commission when such rule was published. There was concern expressed about what appeared to be the degree of discretion afforded the Exchange in determining what constituted an insider or control group as well as how it would be determined whether the standing of such insider or control group would be created or enhanced. As a result, the language of the proposed rule has been revised to specify percentage ownership levels that would determine insider and control groups impacted by the rule.

Further, it was felt that the language in the revised rule should eliminate any misunderstanding that, even though the company's proposed exchange offer met the rule's various provisions, the Exchange could still determine that such exchange offer was a violation of Rule 19c–4. This determination would be based upon whether the proposed offer is being made in conjunction with, or as one of a series of, transactions the effect of which is to create or enhance the standing of an insider or control group.

(2) Statutory Basis

The proposed rule change is consistent with section 6(b)(5) of the Act which, among other things, requires Exchange rules to be designed to promote just and equitable principles of trade, and to, in general, protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competiton

The proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participant or Others

The Exchange has neither solicited nor received written comments concerning its proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the proposal. The commission notes that it has received approximately 100 comment letters in response to its previous solicitation of

[2] The NYSE also proposes to amend NYSE–88–39 to include identical language in both the proposed listing standard (Paragraph 703.16 of the NYSE Listed Company Manual) and new Rule 405A. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Sharon Lawson, Branch Chief, Branch of Exchange Regulation, dated March 6, 1989.

comments on NYSE–88–40. The majority of these letters opposed the exchange of common stock for Unbundled Stock Units (USUs) on the basis that such exchange offer would violate Rule 19c–4 under the Act by disenfranchising existing shareholders, and argued that these exchanges should not be exempted from the prohibition in Rule 19c–4 on exchange offers of securities with unequal voting rights. Accordingly, the Commission is specifically soliciting comment on a variety of issues that the commentators have raised concerning the use of USUs as well as some other issues raised by the NYSE proposal.

First, the Commission solicits comment on whether the aforementioend amendments to NYSE–88–40 adequately address the Rule 19c–4 concerns by ensuring that an exchange offer of common stock for USUs without voting rights would have only a deminimus effect on the voting rights of existing shareholders. In particular, the Commission notes that the amendments would limit any exchange offer of common stock for units to 20% of the company's outstanding stock, rather than 25% as originally proposed, and limit the availability of such an exchange offer to those companies that do not have any person holding 5% or more, and that do not have officers, directors, and any employee benefit plan or pension fund, in the aggregate, holding 10% or more of the company's outstanding stock at the time of the filing of the registration statement of such exchange offer.[3] The commission requests comment on whether the 5% and 10% standards are appropriate to ensure that USUs can not be used to create an insider group or significantly enhance the standing of such group in a company. Commentators may also wish to address the administerability of the NYSE proposal.

Second, several commentators have thus far expressed concern that an exchange offer of USUs for common stock will have the same coercive effect on existing shareholders as the classic dual-class exchange offer of high vote stock for low vote stock with a dividend sweetener which presumptively violates Rule 19c–4.[4] Under this view, the "downside" protection provided by the bond component of the USU and the incremental dividend sweetener to coerce shareholders to exchange voting stock for no or low vote stock in an exchange offer.[5] Accordingly, the Commission solicits comment as to whether the offer to exchange voting common stock for nonvoting USUs would coerce shareholders into tendering their shares even when such action would be contrary to their collective interest. If so, do the amendments to NYSE–88–40 address the concern by increasing the likelihood that a shareholder who chooses not to tender will continue to have meaningful voting rights after the exchange.

The Commission also notes that several commentators have thus far suggested that the economic benefits provided by USUs can be achieved without depriving those shareholders who exchange common stock for USUs of the voting rights which attached to their common stock.[6] Accordingly, the Commission solicits comment on the feasibility and desirability of attaching voting rights in some form to a USU and/or its component parts and if so, what would be the appropriate allocation of votes to the component parts of the USU. In this connection, the Commission notes that attaching voting rights to the bond subunit of the USU may affect the expected tax consequences. Therefore, we solicit comments on whether any voting rights accompanying a USU should be limited to the Incremental Dividend Preferred ("IDP") share subunit, or the Equity Appreciation Certificate ("EAC") subunit and/or the combined Equity Subunit ("ESU"). In this regard, the Commission notes that the relative values of the IDP, EAC and debt portion of a USU may fluctuate substantially during their thirty year life. Commentators should specifically address, therefore, whether fixing voting rights of the IDP and EAC at the time of their issuance might, in effect, result in the creation of super voting shares at any time that the relative value of the IDP or the EAC decreases. To the extent commentators believe that a periodic recalculation of voting rights between the IDP and EAC would be preferable, those commentators are requested to address any burdens imposed on issuers resulting from the creation of shifting voting rights. Comment is also requested as to whether such a recalculation of voting rights in permissible under state corporate law or under the corporate charter provisions of NYSE issuers.[7]

Finally, the Commission is also soliciting specific comments on the amendments to NYSE–88–39, discussed above, that would add certain additional quantitative standards for listing USUs on the NYSE in addition to imposing specific suitability requirements for transactions in USUs. First, we solicit comment on whether the 250 holder requirement and the requirement that issuers of USU's have total assets in excess of $100 million and a net worth in excess of $18 million are adequate to ensure that USU's and the constituent securities traded on the NYSE are of sufficient size and distribution to sustain a fair and orderly market for the product. In particular, we solicit comment on any liquidity concerns raised or answered by these standards and whether a minimum of 250 holders will ensure that USUs and their constituent securities are adequately diversified and not held by too few investors or institutional groups. Second, we solicit comment on the suitability requirements being proposed in Amendment No. 2 for USUs and their constituent securities. In particular, we solicit comment on whether the proposed suitability standards in proposed Rule 405A adequately ensure that investors will be informed about the risks and uncertainties involving trading of USUs and their component parts and, if not, what other standards should be imposed.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission

[3] We note that, under the proposed amendments, a company with persons or groups exceeding either the 5% or 10% standard could still issue USUs, as long as the percentage of beneficial ownership for those persons and groups exceeding the standard remains the same before and after the issuance of USUs.

[4] *See* Securities Exchange Act Release No. 34–25891 (July 7, 1988), 53 FR 26576 (July 12, 1988) ("Adopting Release") at 26381.

[5] The bond subunits provide fixed interest payments and payment of a principal value in 30 years, and the preferred subunits provide a fixed liquidation value, so that each unit as a whole provides a minimum return regardless of the market value or dividend pay-out of the issuer over the 30 years from the time of the exchange offer.

[6] *See e.g.* Letters from Bernard S. Black, Associate Professor of Law, Columbia University, to Jonathan G. Katz, Secretary, SEC, dated February 2, 1989; California Public Employees Retirement to David S. Ruder, Chairman, SEC, dated February 2, 1989; and Robert A.G. Monks, President, Institutional Shareholder Services, Inc. to Jonathan G. Katz, Secretary, SEC, dated February 3, 1989.

[7] For example, Shearson Lehman Hutton is a comment letter on SR–NYSE–40 states that fluctuating voting rights for the IDP could create that fluctuating voting rights for the IDP could create significant problems for one of the four USU issuers due to restrictions in its corporate charter. *See*, letter from Ronald E. Gallatin, Managing Director, Shearson Lehman Hutton, to Securities and Exchange Commission, dated February 10, 1989.

and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 14, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Date: March 9, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-5890 Filed 3-13-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26605; File No. SR-NYSE-87-31]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Reports to Control Persons

I. Introduction

On September 14, 1987, The New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,[1] a proposed rule change that would require that a copy of a member organization's compliance report be furnished annually to the member firm's control persons or, if the member firm has no control persons, to the audit committee of its Board of Directors.[2] The compliance report is an annual report member firms are required to prepare that reviews its supervision and compliance efforts during the preceding year. The requirement that members produce a compliance report was part of a package of NYSE rule changes previously approved that are intended to supplement existing internal compliance procedures of members and member organizations by imposing additional trade review, inquiry and reporting requirements.[3]

[1] 15 U.S.C. 78s(b) and 17 CFR 240.19b-4 (1988).

[2] The proposed rule change was noticed in Securities Exchange Act Release No. 25402, February 26, 1988, 53 FR 7272. The Commission received one comment letter on the proposal and a response by the NYSE to that comment. *See* discussion at p. 3, *infra*.

[3] The proposed NYSE rule change (File No. SR-NYSE-87-10) was approved by the Commission in Securities Exchange Act Release No. 25763, May 27, 1988, 53 FR 20925.

II. Description of Proposed Rule

NYSE Rule 342.30 requires that members and member organizations must prepare a report on supervisory and compliance efforts undertaken during the previous year and to submit the report to its chief executive officer or managing partner by April 1, of each year.[4] Proposed Rule 354(a) would require that by April 1 of each year, each member organization must submit a copy of the annual compliance report to its one or more control persons as defined under paragraph (b) of the proposed rule.[5] If the member or member organization has no such control persons, it is required to submit a copy of the report to the audit committee of its Board of Directors or its equivalent committee or group. Where the member organization's control person is an organization ("controlling organization") the proposed rule requires the member organization to submit the report to the general counsel of the controlling organization and to the audit committee of the controlling organization's Board of Directors or its equivalent committee or group.

Proposed Rule 354(b) states that for the purpose of paragraph (a), the term "control person" means a person who controls the member organization within the meaning of NYSE Rule 2[6] otherwise than solely by virtue of being a director, general partner or principal executive officer (or person occupying a similar status or performing similar functions) of the member organization.

[4] The report must include a tabulation of customer complaints and internal investigations, identification and analysis of significant compliance issues, and plans for future systems or procedures to prevent and detect future compliance concerns. Further, the report must include a discussion of the preceding year's compliance efforts in the areas of antifraud, investment banking, sales practices, books and records, finance, and operations and supervision. *Id.*

[5] The Commission notes that the NYSE definition of control person is applicable solely to the Exchange's rule and may differ from the concept of control person under the Act.

[6] NYSE Rule 2 defines the term "control" as meaning the power to direct or cause the direction of the management or policies of a person whether through ownership of securities, by contract, or otherwise. A person is presumed, under the definition in Rule 2, to control another person if such person, directly or indirectly: (1) has the right to vote 25% or more of the voting securities; (ii) is entitled to receive 25% or more of the net profits; (iii) or is a director, general partner or principal executive officer (or person occupying a similar status or performing similar functions) of the other person. NYSE Rule 2 provides that any person who does not own voting securities, participate in profits, or function as a director, general partner or principal executive officer of another person shall be presumed not to control such other person. Under NYSE Rule 2 any presumption may be rebutted by evidence, but shall continue until a determination to the contrary has been made by the Exchange. As noted in note 5 *supra*, the NYSE definition of control person is applicable solely to the Exchange's rule and may differ from the concept of control person under the Act.

III. Comments on the Proposed Rule Change

The Commission received one comment letter on the proposal. The Securities Industry Association ("SIA") submitted a letter critical of the NYSE proposal and urged the Commission not to approve the proposed rule. The NYSE submitted a letter responding to the SIA's criticisms of its proposal.[7] These comments are summarized below.[8]

In its letter the SIA made five principle points in opposition to the NYSE proposal. First, the SIA argues that the proposed NYSE rule will not accomplish any proper purpose. In this regard the SIA states that the proposed rule would not contribute to the ability of either member organizations or the Exchange to prevent or detect securities law or Exchange rule violations.

Second, the SIA contends that the proposed rule constitutes an

[7] *See* letters from Dennis H. Greenwald, Chairman, Federal Regulation Committee, SIA, to Jonathan G. Katz, Secretary, Commission, dated May 25, 1988, and from Edward A. Kwalwasser, Senior Vice President, NYSE, to Brandon Becker, Associate Director, Division of Market Regulation, dated August 17, 1988 ("NYSE August 17 letter").

[8] Prior to filing the proposed rule with the Commission, the NYSE received two other comment letters, from Prudential-Bache Securities, Inc. ("Prudential-Bache") and Dean Witter Reynolds, Inc. ("Dean Witter"), that were critical of the proposal. These comments, and the Exchange's response to them, were discussed in the notice of the proposed rule change published in the **Federal Register**. *See* note 2, *supra*.

In brief, Prudential-Bache argued that the proposal would create two classes of member organizations (those with and those without control persons) and that the proposal is discriminatory to those member firms with control persons. (*See* discussion *infra*.) In addition, Prudential-Bache contended that the term "control person," as defined under the proposed rule, would include passive investors without regard to the size of their holdings. Therefore, they argued, submission of reports to control persons may create an obligation not heretofore in existence. Dean Witter stated that it fully agrees with Prudential-Bache's comments. In addition, Dean Witter stated that it was concerned that the proposed rule would negate a control persons' ability to use the good faith exemption from liability under section 20(a) of the Act. *See* discussion *infra*.) *See* letters from Loren Schechter, Senior Vice President, Prudential-Bache, to David Marcus, Executive Vice President, NYSE, dated May 26, 1987, and from Dennis H. Greenwald, Executive Vice President, Dean Witter, to David Marcus, Executive Vice President, NYSE, dated June 3, 1987.

The NYSE denied that the proposal discriminates against member firms with control persons and stated that it does not believe that receipt of the required compliance reports would negate a control person's ability to use the good faith defense under section 20(a) of the Act.

unwarranted extension of federal regulation to shareholders of a member firm, presumably by placing a supervisory burden on shareholders classified as control persons or a controlling organization, and thereby interferes with matters relating to corporate governance properly left to state law.

Third, the SIA argues that the proposed NYSE rule is unfair and discriminatory. The SIA states that the proposal creates, in effect, two classes of member organizations by requiring only those firms with large stockholders to submit their annual compliance report to persons outside their own organization.

Fourth, the SIA contends that the proposed requirement that member firms submit their annual compliance report to control persons may suggest that a control person assumes the burden to act to correct problems described in the report. The SIA states that such a suggestion makes a basic change in the role of control persons and argues that such obligations should not be created through adoption of a proposed rule change.

Fifth, the SIA believes the proposed rule would make control persons and controlling organizations of member firm broker-dealers more vulnerable to civil actions and deprive them of the protections of section 20(a) of the Act.[9]

The SIA states that by tying a control person or a controlling organization into a member broker-dealer's supervisory process, the proposed NYSE rule would make control persons or controlling organizations more vulnerable to unwarranted lawsuits. Moreover, the SIA states that release of a member firm's annual compliance report to its controlling organization's audit committee would increase the possibility that the information in the report would lose its privilege and thus be subject to discovery in a civil action.

In its August 17 letter, the NYSE responded to the SIA's concerns and objections to the proposed rule change. First, the Exchange denies that the proposal would not accomplish a proper purpose. The NYSE states that the proposed rule would require control persons or a controlling organization to be notified of the member firm's supervision and compliance efforts and of any significant problems that may have developed and the steps planned to alleviate those problems. The NYSE believes that by providing the controlling organization with the member firm's annual compliance report, the probability that prompt attention will be given by the member firm to resolving its significant compliance problems will be enhanced.

Second, the Exchange disputes the SIA's contention that the proposed rule represents an unwarranted extension of federal regulation to shareholders of a member firm and interferes with matters relating to corporate governance under state law. The NYSE states that the proposed rule merely requires that certain information be made available to control persons. The Exchange argues that this information is relevant to the control person's investment and enables the control person, if it sees fit, to respond as it deems appropriate to the information provided in the report. The Exchange compares the requirement that the annual compliance report be submitted to control persons or a controlling organization to requirements that a subsidiary periodically report on its financial condition and operations to its parent company. The NYSE believes that the subsidiary's ability to operate in a fashion that permits it to comply with the rules of the Exchange should be of significant interest and importance to the parent.

Third, the NYSE disagrees with the SIA's contention that the proposed rule change creates two classes of member organizations and that it is unfair and discriminatory. The Exchange states that the intention of the proposed rule is to place the annual compliance report into the hands of persons who are in a position to exert influence on the member to take necessary corrective action to remedy problems discussed in the report. The NYSE argues that the report should be sent to these persons irrespective of whether such persons exist outside the member organization, and that there is nothing unfair or discriminatory in this requirement.

Fourth, the NYSE disputes the SIA's contention that the proposed rule places a burden on control persons to correct problems that may be described in the report. The Exchange states that the proposed rule simply assures that control persons will be supplied with the report. The control person remains free to take no steps whatsoever or any steps it may deem appropriate with respect to the contents of the report. The Exchange presumes, however, that the control persons will be as concerned with the member firm's compliance with NYSE rules as they will be about other aspects of the member's firm's operations.

Fifth, the NYSE asserts that the SIA's claim that the proposal will make control persons or controlling organizations more vulnerable to lawsuits is highly speculative. The Exchange also disagrees with the SIA's assertion that receipt of this report by control persons would deprive them of the good faith defense under section 20(a) of the Act of that release of the report to control persons would increase the chance that the report would lose any privilege it may have from being subject to discovery in the course of civil litigation.

The Exchange argues that the proposed rule creates no obligation or responsibility on the part of the control person, but simply provides them with information the NYSE believes they should receive. Moreover, the Exchange contends that the requirement might enable control persons to document that they acted in good faith upon receipt of the report, thus providing insulation from civil liability. For example, if a control person acted to increase their member firm's supervision and compliance areas after receipt of such a report, those actions could demonstrate a control person's good faith efforts. In this way, the NYSE asserts that the proposed rule change could enhance a control person's ability to use the good faith defense under section 20(a) of the Act.

With regard to the possible loss of privilege from discovery of the annual

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[9] The concept of controlling persons for purposes of the Act is reflected in section 20(a). Section 20(a) of the Act provides in pertinent part:

Every person who, directly or indirectly, controls any person liable under any provision of this title or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.

With regard to civil penalties which the Commission can seek to impose on control persons under the Act, we note that the recently adopted "Insider Trading and Securities Fraud Enforcement Act of 1988" ("ITSFEA"), Pub. L. No. 100-704, 102 Stat. 4677 (1988) added section 21A to the Act which provides the Commission the authority to seek civil penalties from persons who have committed insider trading violations under the Act and their controlling persons (as that term has been applied under the Act). ITSFEA specifically states that section 20(a) does not apply to controlling person liability under section 21A(a). Instead, the section 20(a) "good faith" defenses are replaced by the standard in the new section 21A(b)(1) which provides that no control person shall be subject to a civil penalty under this section unless the Commission establishes that:

(A) Such controlling person knew or recklessly disregarded the fact that such controlled person was likely to engage in the act or acts constituting the violation and failed to take appropriate steps to prevent such act or acts before they occurred; or

(B) Such controlling person knowingly or recklessly failed to establish, maintain, or enforce any policy or procedure required under section 15(f) of [the Act] or section 204A of the Investment Advisers Act of 1940 and such failure substantially contributed to or permitted the occurrence of the act or acts constituting the violation.

compliance report, the NYSE states that it is unclear that the report would be entitled to any privilege from discovery in civil litigation even if it remained within the member firm. Moreover, the Exchange notes that the report does not need to be prepared in a way that should increase the exposure of the control persons or the member firm to civil liability. The NYSE stated that identification and analysis of compliance problems required in the report only needs to be done in a generic manner and that specific identification of the incident or the parties involved is not necessary unless warranted by the facts.

IV. Discussion

The Commission has reviewed closely the proposed NYSE rule change, the comments received by the Commission and the Exchange in opposition to the proposal, and the NYSE's response to those comments. On the basis of this review, the Commission has concluded that the proposed NYSE rule change is consistent with the requirements of the Act and, accordingly, should be approved.

In particular, the Commission believes that the proposed rule is consistent with sections 6(b)(1) and 19(g)(1)(A) of the Act, which require that national securities exchanges must ensure member and member organization compliance with the Act, its rules, and the rules of the exchange. The requirement that a copy of the member firm's annual compliance report be provided to control persons, its controlling organization, or to the audit committee on the member firm's Board of Governors is a proper means to promote the goals of the compliance procedures imposed by SR–NYSE–87–10. The Commission, when approving SR–NYSE–87–10, stated that the annual report requirement in NYSE Rule 342.30 will improve significantly the compliance efforts of member organizations by ensuring that the chief executive officer or managing partner of the member firm focuses sufficient attention on supervisory and compliance obligations. The Commission believes that the requirement that the annual compliance report be provided to a member's control persons or controlling organization is an additional method of providing these persons with the information necessary to evaluate the compliance procedures of the member. While the proposed rule does not, in and of itself, obligate control persons to take any action upon receipt of the report, it does ensure that they will be notified of the supervisory and compliance situation of their member firm.

The Commission recognizes that a control person's obligation to act upon the information contained in its member firm's annual compliance report must be viewed in light of provisions governing control person liability under the Act. As noted previously, control persons are subject to liability under section 20(a) unless they acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, under the new Section 21A the Commission can seek to impose civil penalties on control persons for insider trading violations committed by their controlled person or organization: (1) Where the control person knew or recklessly disregarded the fact that the controlled person was likely to engage in such acts and failed to take steps to prevent such actions; or (2) where the control person knowingly or recklessly failed to establish, maintain, or enforce any policy or procedure required under Section 19(f) of the Act or Section 204A of the Investment Advisers Act of 1940 and such failure substantially contributed to or permitted the occurrence of the act or acts constituting the violation.[10] In view of these standards for control person liability, the Commission believes it is likely that control persons will be and should be as concerned with the member firm's compliance with the requirements of the Act, its rules, and with NYSE rules, as they would be about other aspects of the member firm's operations and that, as a consequence, the probability that prompt attention will be given by the member firm to resolving significant compliance issues will be enhanced. For these reasons, the Commission also believes that the proposed rule change is consistent with section 6(b)(5) of the Act which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

Concerning the specific objections to the proposed rule change raised in comment letters received by the Commission and the NYSE, for the reasons set forth below the Commission does not believe these objections warrant instituting proceedings to consider disapproving the proposed rule change. The Commission believes that the intent of the proposed rule, to increase the probability that prompt attention will be provided by member firms to resolving significant compliance issues by providing copies of the firm's annual compliance report to control persons, is plainly a proper purpose under sections 6(b)(1) and 19(g)(1)(A) of the Act.

The proposed rule also does not represent an unwarranted extension of federal regulation interfering with corporate governance areas under state law. Sections 6(b)(1) and 19(g)(1)(A) require that the rules of a national securities exchange must ensure member and member organization compliance with the Act, its rules, and the rules of the exchange. As stated above, the intention of the proposed rule is to increase the probability that NYSE member firms will monitor their compliance procedures. The rule change does not alter, restrict, or impose conditions on the corporate structure of member firms or their control persons. To comply with the rule change, an NYSE member would not have to make any changes to its corporate structure. In addition, the proposed rules does not impose any new obligation on control persons to respond to the report.[11]

Furthermore, the Commission disagrees that the proposed rule is unfair and discriminatory and that it creates two classes of member firms. The proposed rule merely requires that member firms submit copies of their annual compliance report to control persons or a controlling organization where such persons or organization exists. The Commission finds nothing unfair or discriminatory in that requirement. Moreover, the fact that a firm's control person might be a large, outside shareholder does not place any special requirement or burden on that firm. The NYSE believes it has set the share ownership level for control high enough—25%—to capture shareholders with such a substantial stake in the company that they would be in a position to exert influence or direction over the member's operations.[12]

The Commission also can find no basis to sustain commentators' claims that the proposed rule will deprive them of the good faith defense under section 20(a) of the Act or increase the potential that the report would be subject to discovery. A control person who receives a report pursuant to the rule may still assert the defense under section 20(a), where applicable, in a subsequent civil action and attempt to meet the burden of showing good faith

[10] *See* discussion *infra*.

[11] *See* discussion *infra*.

[12] NYSE Rule 2, which defines the term "control" provides that any presumption of control under the rule may be rebutted by evidence, but shall continue until a determination to the contrary has been made by the Exchange. *See* note 5, *supra*.

and non-inducement of the acts constituting the violation or cause of action. It should be recognized, in this regard, that section 20(a) of the Act does not, and was not intended to, provide a blanket exemption from control persons from civil liability. Rather, on its face, it extends joint and several liability to control persons for the violations of persons that they directly or indirectly control, except where the control person acted in good faith and did not directly or indirectly induce the violation. In the normal case, the mere receipt of a compliance document identifying minor compliance problems and the actions taken to address any compliance weaknesses would in no way eliminate the controlling person's good faith defense. In the extraordinary case, where the report indicates serious problems and an absence of any effective response by the firm, it would appear consistent with the purposes underlying the statute to expect the control person to respond.[13]

Similarly, under the newly adopted section 21A of the Act[14] the Commission may seek to impose civil penalties on control persons based on insider trading violations by their controlled person or organization where the control person knew or recklessly disregarded the fact that the controlled person was likely to engage in the act or acts constituting the violation and failed to take appropriate steps to prevent such acts, or where the control person knowingly or recklessly failed to establish, maintain, or enforce any policy or procedure required under section 15(f) of the Act, or section 204A of the Investment Advisors Act of 1940, and that failure substantially contributed to or permitted the violation.

The proposed NYSE rule change requiring submission of an annual compliance report to a control person (as defined by the NYSE) will not alter a control person's obligations under the Act. The Commission recognizes that the report could be a factor in determining a control person's civil liability under section 20(a), or the imposition of civil penalties by the Commission under section 21A, as a result of violations of the controlled person. In the Commission's view, however, any civil liability for control persons which arises under section 20(a) as a result of the determination that a control person's actions were not in good faith and that they directly or indirectly induced the acts constituting the violation is consistent with the purposes of the Act. Similarly, in any case where the Commission seeks to impose civil penalties on a control person under section 21A based on a determination that the control person knew or recklessly disregarded information that their controlled person was likely to take actions constituting a violation and failed to take steps to prevent them, or where the control person knowingly or recklessly failed to establish, maintain, or enforce procedures and such failure substantially contributed to or permitted the violation, based on the control person's knowledge of information contained in the report, such liability is appropriate and fully consistent with the objectives of ITSFEA to increase management and supervisory efforts to prevent insider trading.

Finally, the Commission believes that submission of the member firm's annual compliance report to control persons would have no impact on the question of whether a member firm's annual compliance report would be eligible for privilege from discovery. Although the SIA comment letter was not specific on this point, we presume that the SIA was referring to discovery conducted under Rule 26 of the Federal Rules of Civil Procedure and to the potential application of the attorney "work product" privilege from such discovery under the Rule. The work product privilege from discovery applies to material generated for use in litigation.[15] The work product privilege does not, however, apply to reports prepared in the regular course of business.[16] Under NYSE Rule 342.30 NYSE member firms are required to prepare an annual compliance report and provide it to their firm's chief executive officer. In addition, members firms are required, upon the Exchange's request, to make the report available to the NYSE.[17] In view of this, the Commission concurs with the NYSE that it is not at all clear that such a report would be eligible for work product privilege from discovery under any circumstances. The Commission does not believe that the additional requirement that the report also be distributed to a member firm's control persons will affect its eligibility for the work product privilege.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 7, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-5797 Filed 3-13-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26607; File No. SR-OCC-89-1]

Self-Regulatory Organization; The Options Clearing Corporation; Notice of Proposed Rulemaking Regarding Cross-Margining

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 23, 1989, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

SR-OCC-89-1 proposes Rules pursuant to which OCC would implement a cross-margining program with the Chicago Mercantile Exchange ("CME"). The program would initially be available only for positions in certain OCC-cleared stock index options and CME-cleared stock index futures and options on stock index futures. In addition, OCC-CME cross-margining would initially be available only for

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[13] Vicarious liability may also be imposed on control persons under respondeat superior, to which the "good faith" defense of Section 20(a) would not apply. The Second, Fourth, Fifth Sixth and Seventh Circuits have held that control person provisions under the Act and the Securities Act of 1933 are not the exclusive means by which vicarious liability can be imposed and that liability may also be imposed under agency principles—respondeat superior. *See, e.g., Paul F. Newton & Company* v. *Texas Commerce Bank*, 630 F.2d 1111 (5th Cir. 1980); *Marbury Management, Inc.* v. *Kohn*, 629 F.2d, 705 (2nd Cir. 1980); *Halloway* v. *Howerdd*, 536 F.2d 690 (6th Cir. 1976); *Fey* v. *Walston & Co.*, 493 F.2d 1036 (7th Cir. 1974); *Johns Hopkins University* v. *Hutton*, 422 F.2d 1124 (4th Cir. 1970), *cert. denied*, 416 U.S. 918 (1974). The Third and Ninth Circuits have held that a control person's vicarious liability under the Act may only be determined under Section 20(a) and that agency principles—respondeat superior—may not be used. See, e.g., *Rochez Brothers* v. *Rhoads*, ,527 F.2d 880 (3rd Cir. 1975); *Zweig v. Hearst Corp.*, 521 F.2d 1129 (9th Cir.), *cert. denied*, 423 U.S. 1025 (1975).

[14] *See* note 8, *supra*.

[15] *See* generally, *Hickman* v. *Taylor*, 329 U.S. 495 (1947).

[16] *See, e.g., United States* v. *Gulf Oil Corp.*, 760 F.2d 292, 296-297 (Temp. Emer. Ct. App. 1985); *Fann* v. *Giant Food, Inc.*, 115 FRD 593, 596 (D.D.C. 1987); *Kelly* v. *City of San Jose;* 114 FRD 653, 659 (N.D. Cal. 1987); *State of Colorado* v. *Schmidt-Tiago Construction Co.*, 108 FRD 731, 734 (D. Colo. 1985).

[17] *See* Commission's order approving NYSE Rule 342.30, note 3, *supra*.

positions that qualify as "proprietary" under the rules of the Commodity Futures Trading Commission ("CFTC") and as "non-customer" under the hypothecation rules of the Commission. However, the proposed rule change has been structured to facilitate expansion of the cross-margining program to other commodity clearing organizations, other types of options, futures and commodity options products, and positions other than those that are "proprietary" within the meaning of the CFTC's rules and "non-customer" within the meaning of the Commission's hypothecation rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit OCC to implement a cross-margining program with the CME. OCC and CME have entered into a Cross-Margining Agreement (the "Cross-Margining Agreement" or "Agreement").

The Agreement provides that a firm that is a clearing member of both OCC and CME (a "Joint Clearing Member") would be eligible to elect cross-margining, as would a pair of affiliated firms of which one is a clearing member of OCC and the other is a clearing member of CME (a "pair of Affiliated Clearing Members").

Section 2 of the Agreement provides that Joint Clearing Members and pairs of Affiliated Clearing Members electing cross-margining shall establish cross-margining accounts ("X-M Accounts") at the clearing organizations. Section 2 also provides that each Joint Clearing Member and each pair of Affiliated Clearing Members shall designate either OCC or CME as its "Designated Clearing Organization." The Designated Clearing Organization would provide the Joint Clearing Member or pair of Affiliated Clearing Members with a daily Margin and Settlement Report (described below) and perform settlement functions on behalf of itself and the other clearing organization in connection with the X-M Accounts.

Section 3 of the Agreement provides that a Joint Clearing Member or pair of Affiliated Clearing Members may designate its or their X-M Accounts as "X-M Pledge Accounts" by entering into an "X-M Pledge Account Agreement." Pursuant to an X-M Pledge Account Agreement, the Joint Clearing Member or pair of Affiliated Clearing Members would grant a participating bank (a "Secured Party") a security interest in the positions held in the pair of X-M Pledge Accounts, and all proceeds thereof, as security for loans extended by the Secured Party to the Clearing Member or Clearing Members. The security interest would permit the Joint Clearing Member or pair of Affiliated Clearing Members to borrow against the value of the options positions in the X-M Pledge Accounts to finance payment of variation margin with respect to the futures positions in the X-M Pledge Accounts. (If the futures positions in the account generated variation margin, that variation margin would be used to pay down the outstanding balance of the loans.) The security interest of the Secured Party would be subordinate to that of OCC and CME, but only to the extent of obligations to OCC and CME arising from the X-M Accounts. Thus, if the Joint Clearing Members or pair of Affiliated Clearing Members defaulted on an obligation and the X-M Accounts were liquidated, OCC and CME would first be made whole in respect of all obligations to them arising from the X-M Accounts, but the Secured Party would then be entitled to the remaining proceeds of the positions in the X-M Accounts, up to the amount of the secured obligation.

Section 5 of the Agreement describes the determination by OCC and CME of the initial margin requirement for X-M Accounts. (The term "initial margin" as used in the Agreement refers to options-style margin, held by the clearing organizations, and adjusted on at least a daily basis.) Each clearing organization would utilize its own margin system to calculate a margin amount that it would require on the combined positions in the X-M Accounts. The average of the two amounts would be the "Base Margin Requirement." Either clearing organization could also elect to use as the Base Margin Requirement the margin amount determined by the other clearing organization's system. (OCC and CME have determined that their respective margin systems generate very similar, but not always identical, margin requirements for various combinations of positions.) A "Super Margin" amount would be determined by reference to Exhibit F to the Agreement, and the total initial margin requirement would be determined by adding the Super Margin amount to the Base Margin Requirement.

The Super Margin amount would range between zero and one hundred percent of the Base Margin Requirement, depending upon the size of the Base Margin Requirement—the larger the Base Margin Requirement, the larger the percentage. Clearing Members are accordingly discouraged from maintaining positions in X-M Accounts that would generate large margin requirements. Since large margin requirements are created by unhedged postions, Clearing Members are thereby discouraged from maintaining unhedged positions in the X-M Accounts.

Section 5 also gives each clearing organization the unilateral authority to require additional margin with respect to the obligations in the X-M Accounts and to cause intra-day margin calls to be made.

Section 6 of the Agreement provides that initial margin deposits may be in the form of cash, United States Treasury securities, letters of credit, common stock, or a combination of the foregoing. The Section describes the requirements for, and the methods for holding, each form of margin. The Section also provides that initial margin in the form of cash may be invested overnight by the Designated Clearing Organization, subject to arrangements satisfactory to OCC and CME.

Section 7 of the Agreement describes the daily settlement procedures in respect of X-M Accounts. CME and OCC would exchange reports on positions and settlements early in the morning on each business day. The margin requirement on each pair of X-M Accounts would then be determined as described above. The Designated Clearing Organization for each Joint Clearing Member or pair of Affiliated Clearing Members would then issue a "Margin and Settlement Report" showing the margin requirement and netted settlement obligation in respect of the pair of X-M Accounts. All settlement activity with the Joint Clearing Member or pair of Affiliated Clearing Members would be conducted through a "Joint Settlement Account"—a bank account in the joint names of OCC and CME—and any transfers from that account would require the approval of both CME and OCC.

Section 8 of the Agreement describes close-out of X-M Accounts. The Section provides that positions in X-M Accounts shall be subject to liquidation upon the suspension of the Joint Clearing Member

or one of the pair of Affiliated Clearing Members by either OCC or CME. The Section provides that OCC and CME may agree, consistent with their respective rules, to delay liquidation of some or all of the positions, and also provides that OCC and CME will coordinate liquidation to try to assure that both legs of any hedge position are closed out simultaneously.

Section 8 also provides that, if the funds in the X–M Accounts are insufficient to close out the positions, OCC and CME will share the shorfall equally, regardless of whether the shortfall was in the X–M Account at CME or in the X–M Account at OCC. The Agreement requires that OCC and CME provide in their respective rules that their respective Clearing Funds may be used for this purpose.

Section 8 provides further that, if there are funds remaining after the X–M Accounts are closed out, OCC and CME will each be entitled to apply half of the surplus against defaults in other obligations of the Joint Clearing Member or pair of Affiliated Clearing Members. Each clearing organization, if it does not need all of its half of such surplus, is required to make the excess of such surplus available to the other clearing organization. Any funds remaining after all obligations to both clearing organizations have been satisfied are to be paid to the Clearing Member or its representative.

Section 9 of the Agreement imposes confidentiality obligations on each clearing organization with respect to information obtained by it in connection with the Agreement or the transactions or activities contemplated by the Agreement.

Section 10 of the Agreement provides that OCC and CME will indemnify each other against claims incurred as the result of any action or failure to act by the indemnitor in connection with the Agreement or the procedures contemplated by the Agreement, if the action or failure to act constitutes a violation of the Agreement or any obligation undertaken in connection with the Agreement or such procedures, any rule of the indemnitor, or any law or governmental regulation applicable to the indemnitor. The Section provides in particular for indemnification against claims incurred as the result of any unauthorized investment of cash margin deposits or any defalcation or theft of margin funds by an employee.

Section 11 of the Agreement sets out warranties and representations of OCC and CME to each other with respect to corporate good standing, corporate authority to enter into the Agreement, compliance with corporate agreements, and the securing of all necessary regulatory approvals.

Section 12 of the Agreement provides that the Agreement may be terminated without cause upon thirty days' notice by either OCC or CME after the Agreement has been in effect for at least a year. The Section also provides that, following a default by one of the parties which is not promptly cured after written notice thereof, the Agreement may be terminated by the nondefaulting party upon five business days' notice. In either case, termination of the Agreement would end the cross-margining arrangement, and positions in each of the former X–M Accounts would thereafter be subject to margin requirements without regard to positions in the other of the former X–M Accounts.

OCC proposes to make changes in its By-Laws and Rules to implement the Cross-Margining Agreement. A new Section in Article VI of OCC's By-Laws would set out OCC's authority to enter into the Cross-Margining Agreement with CME, and would provide that Joint Clearing Members and pairs of Affiliated Clearing Members electing cross-margining must enter into account agreements as described above. Non-substantive changes would be made to Article VI, Section 23 of OCC's By-Laws, which describes OCC's existing cross-margining program with The Intermarket Clearing Corporation, so that the Section would parallel the new cross-margining Section.

Changes are proposed to the By-Laws governing use of OCC's Clearing Fund to make clear, in conformance with Section 8 of the Cross-Margining Agreement, that OCC would have recourse to its Clearing Fund in order to pay an obligation to CME arising under the Cross-Margining Agreement.

As noted above, the Cross-Margining Agreement provides that OCC and CME would each use its own margin system to calculate margin for X–M Accounts. Changes are therefore proposed in OCC's margin rule so that the rule applies to futures as well as options.

A new Chapter VII, containing the Rules applicable to cross-margining under the OCC–CME program, would be added to OCC's Rules. Rule 701 would describe the X–M Accounts and Account Agreements described above and require each Joint Clearing Member or pair of Affiliated Clearing Members to establish a separate bank account for cross-margining settlement. Rule 702 would provide for designation by each Joint Clearing Member or pair of Affiliated Clearing Members of its or their Designated Clearing Organization. Rule 703 would describe the pledge program and the Pledge Agreements described above. Rule 704 would state that the amount of margin required by OCC and CME shall be determined in accordance with the Cross-Margining Agreement, and would set out OCC's authority to require intra-day margin. Rule 705 would describe the acceptable forms of margin. Rule 706 would describe the daily settlement procedures. Rule 707, together with conforming changes in OCC's Rules relating to suspension of Clearing Members, would implement the provisions of the Cross-Margining Agreement with respect to close-out.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Securities Exchange Act of 1934, as amended because it would implement a cross-margining system which would enhance the safety of the clearing system while providing lower clearing margin costs to Clearing Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not and are not intended to be solicited by OCC with respect to the proposed rule change and none have been received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW.,

Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to SR-OCC-89-01 and should be submitted by April 4, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 7, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-5889 Filed 3-13-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26606; File No. SR-PSE-87-20]

Self-Regulatory Organizations; Pacific Stock Exchange; Order Approving Proposed Rule Change

On June 22, 1987, the Pacific Stock Exchange ("PSE") filed with the Commission a proposed rule change (SR-PSE-87-20) under section 19(b) of the Securities Exchange Act of 1934 ("Act"). The proposal would amend certain provisions in PSE's Constitution to reflect the termination of services provided by the Pacific Clearing Corporation ("PCC") and the Pacific Securities Depository Trust Company ("PSDTC"). The Commission published notice of the proposal in the **Federal Register** on January 18, 1989.[1] No comments were received. For reasons discussed below, the Commission is approving the proposal.

Article III, section 2(b) of PSE's Constitution currently provides, among other things, that any officer or director of a member firm of PCC or PSDTC, as well as any officer, director, or general partner of affiliates of such firms, may become a member of PSE's Board of Governors. The proposal removes references to PCC and PSDTC and provides that any officer or director of a member firm of a subsidiary of PSE performing depository or clearing functions or any officer or director of affiliates of such firms may be elected as a member of the Board of Governors. According to PSE, this amendment will not affect the eligibility of any current Governor who is an officer or director of a member firm of PCC or PSDTC.

Article IV, section 4 of PSE's Constitution currently specifies that PSE's Clearing Committee shall consist of PCC's Board of Directors, and the Committee shall recommend to the Board of Governors rules and procedures pertaining to the settlement of PSE contracts. The proposal eliminates specific references to the Committee's composition, delegates to the Board of Governors the appointment of Committee members, and prescribes that the Committee shall perform its duties relating to the settlement of PSE contracts as appropriate.

Article VII, section 4(a) of PSE's Constitution currently states that if a PSE member transfers its membership, the purchase price for such transfer shall be paid to PSE prior to admission of the transferee. The transferor shall be entitled to the purchase price minus, among other things, dues and assessments of the transferor payable to PSE and PCC. The proposal deletes the reference to PCC and provides that the amount of the purchase price to which the transferor is entitled shall not include dues and assessments of the transferor payable to PSE and if applicable, to any entity of PSE performing clearing or depository functions.

Article XV, section 1 of PSE's Constitution currently states that PCC shall provide facilities for: (1) Clearing exchange and other transactions of members; (2) borrowing and transferring securities for members; and (3) rendering accounting and other services for members. The proposal eliminates the reference to PCC and states that PSE or any entity designated by the Board of Governors may provide such services.

PSE believes that the proposal is consistent with the Act in that it will protect investors and the public interest by conforming PSE rules to the decision to terminate PCC and PSDTC. The Commission also believes that the proposal is consistent with the Act, specifically, sections 6 and 17A. In particular, the Commission believes that the proposal is designed to facilitate the termination of PCC and PSDTC by amending PSE's Constitution to reflect such termination.

The Commission notes that approval of this proposal does not constitute Commission-authorized termination of PCC and PSDTC. To effect such termination, PSE must file with the Commission, and the Commission must approve, applications to deregister PCC and PSDTC as clearing agencies.

It is therefore ordered, pursuant to section 19(b) of the Act, that the proposed rule change (SR-PSE-87-20) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Johathan G. Katz,

Secretary.

Dated: March 7, 1989.

[FR Doc. 89-5798 Filed 3-13-89; 8:45 am]

BILLING CODE 8010-01-M

[1] *See* Securities Exchange Act Release No. 26647 (January 11, 1989), 54 FR 2023.

SMALL BUSINESS ADMINISTRATION

Interest Rates

As directed by Pub. L. 100-590 SBA will establish a maximum legal interest rate for any commercial loan which funds any non-SBA portion of a project financed under section 504 of the Small Business Investment Act of 1958 as amended.

This rate will be 4% over the rate for direct loans published quarterly by SBA.

For the remainder of the January-March quarter of 1989, this rate will be thirteen and seven-eights (13⅞%), i.e., the direct rate of 9⅞% plus 4.

Edward J. Myerson,

Deputy Associate Administrator for Finance and Investment.

[FR Doc. 89-5899 Filed 3-13-89; 8:45 am]

BILLING CODE 8025-01-M

Region V Advisory Council; Public Meeting

The U.S. Small Business Administration, Region V Advisory Council, located in the geographical area of Madison, will hold a public meeting at 8:00 a.m. c.s.t. on Friday, May 12, 1989, at The Pfister Hotel, Milwaukee, Wisconsin, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others persent.

For further information, write or call C.A. Charter, District Director, U.S. Small Business Administration, 212 East Washington Avenue, Room 213, Madison, Wisconsin 53703, (608) 264-5205.

March 8, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

FR Doc. 89-5900 Filed 3-13-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

[Docket 45663]

Robert O. Nay et al.; Prehearing Conference

In the matter of Robert O. Nay, Emerald Tours, Ltd. (Virginia) World Classics, Ltd., and Emerald Tours, Ltd. (Illinois) Enforcement Proceeding.

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on March 21, 1989, at 10:00 a.m. (local time) in Room 5332, Nassif Building, 400 Seventh Street SW., Washington, DC 20590, before the undersigned administrative law judge, to consider the pending motion and further proceedings.

Dated at Washington, DC, March 8, 1989.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 89-5877 Filed 3-13-89; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Date: March 8, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1035

Form Number: 8611

Type of Review: Revision

Title: Recapture of Low-Income Housing Credit

Description: Internal Revenue Code section 42 permits owners of residential rental projects providing low-income housing to claim a credit against their income tax. If the property is disposed of or it fails to meet certain requirements over a 15-year compliance period, the owner must recapture on Form 8611 part of the credit(s) taken in prior years.

Respondents: Individuals or households, Businessess or other for-profit businesses or organizations

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping—3 hours 50 minutes.

Learning about the law or the form—1 hour 5 minutes.

Preparing, copying, assembling, and sending the form to IRS—1 hour 12 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping/ Reporting Burden: 6,120 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-5780 Filed 3-13-89; 8:45 am]

BILLING CODE 4810-25

Internal Revenue Service

Art Advisory Panel; Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATE: The meeting will be held April 12, 1989.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:AS, 1111 Constitution Avenue, NW., Room 2575, Washington, DC 20224, Telephone No. (202) 566-9259 (not a toll free number).

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), that a closed meeting of the Art Advisory Panel will be held on April 12 in Room 3313 beginning at 9:30 a.m., Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c) (3), (4), (6), and (7) of Title 5 of the United States Code, and that the meeting will not be open to the public.

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Lawrence B. Gibbs,

Commissioner.

[FR Doc. 89-5885 Filed 3-13-89; 8:45 am]

BILLING CODE 4830-01-M

[Delegation Order No. 77 (Rev. 24)]

Delegation of Authority; Tax Examiners et al.

AGENCY: Internal Revenue Service.

ACTION: Delegation of Authority.

SUMMARY: The authority to issue or execute agreement to rescind notices of deficiency is extended to include Tax Examiners (Reviewers) (Grade GS-7 and higher), Quality Review Staff, Examination Division; Revenue Officer Examiners (Grade GS-11 and higher), district Collection functions; Technical Quality Reviewers (Grade GS-12 and higher) and Tax Examiners (Grade GS-6 and higher), Collection Technical Review; and Tax Examiners (Grade GS-6 and higher), district Collection Support function. The text of the delegation order appears below.

EFFECTIVE DATE: March 9, 1989.

FOR FURTHER INFORMATION CONTACT:

Michael Julianelle, EX:Q:S:A, Room 2116, 1111 Constitution Ave., NW., Washington, DC 20224, telephone 202-566-6466 (not a toll-free telephone number); or

Josephine Mosley, CO:O:CPS, Room 7710, 1111 Constitution Ave., NW., Washington, DC 20224, telephone 202-535-6128 (not a toll-free telephone number).

Authority to Issue or Execute Agreement to Rescind Notices of Deficiency

1. The authority granted to the Commissioner of Internal Revenue and District Directors, by 26 CFR 301.7701-9, 26 U.S.C. 6212, 26 CFR 301.6212-1, Treasury Order 150-10, and 26 CFR 301.6861-1 to sign and send to the taxpayer by registered or certified mail any notice of deficiency is hereby

delegated to the officials listed below. These same officials are authorized by Treasury Order 150–10, 26 U.S.C. 6212(d) and section 1562 of the Tax Reform Act of 1986 to sign a written form or document rescinding any notice of deficiency.

a. Chief Counsel;

b. Regional Counsel;

c. Chiefs, Assistant Chiefs and Associate Chiefs of Appeals Offices;

d. Appeals Team Chiefs as to their respective cases;

e. Service Center Directors;

f. Assistant Commissioner (International);

g. Reviewers (grade GS–12 and higher) in Employee Plans and Exempt Organizations Divisions;

h. Tax Examiners (Reviewers) (grade GS–7 and higher), Quality Review Staffs; Revenue Agents, and Tax Auditors (reviewers) (grade GS–6 and higher) in the Examination Divisions and the Office of Compliance, Assistant Commissioner (International);

i. Revenue Agents (grade GS–11 and higher) in streamlined districts Examination Sections and/or groups;

j. Chiefs of Correspondence and Processing Sections;

k. Examination Tax Examiners/ Revenue Agents (grade GS–6 and higher) in Service Center Compliance Divisions;

l. Revenue Officer Examiners (Grade GS–11 and higher) in district Collection functions;

m. Technical Quality Reviewers (Grade GS–12 and higher) and Tax Examiners (Grade GS–6 and higher) in Collection Technical Review;

n. Tax Examiners (Grade GS–6 and higher) in district Collection Support function;

o. Tax Examiners (grade GS–5 and higher) in Service Center Processing and Tax Accounts Divisions;

p. Tax Examiners (Reviewers) (Grade GS–6 and higher), Quality Assurance and Management Support Division, Service Centers; and

q. Tax Examiners (grade GS–6 and higher) in Service Center Collection Branch.

2. This authority may not be redelegated.

3. To the extent that the authority previously exercised consistent with this order may require ratification, it is hereby approved and ratified.

4. Delegation Order No. 77 (Rev. 23), effective June 16, 1988, is superseded.

Date: February 24, 1989.

Approved:

Charles H. Brennan,

Deputy Commissioner (Operations).

[FR Doc. 89–5886 Filed 3–13–89; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 48
Tuesday, March 14, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

March 9, 1989.

FCC To Hold Open Commission Meeting, Thursday, March 16, 1989

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, March 16, 1989, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC

Agenda, Item No., and Subject

Common Carrier—1—Title: In the Matter of Policy and Rules concerning Rates for Dominant Carriers, CC Docket No. 87–313. Summary: The Commission will consider an item addressing proposed modification to rules and policies regarding the regulation of rates for dominant carriers' interstate basic service offerings (price caps).

Mass Media—1—Title: Review of Section 73.658(c) of the Commission's Rules. Summary: The Commission will consider whether to modify or eliminate the network term of affiliation rule.

Mass Media—2—Title: In re: Transfer of Control of Licensed Non-Stock Entities. Summary: The Commission will consider proposed guidelines for determining when a transfer of control of certain types of licensed non-stock entities is deemed to occur, and on proposed clarifications of the procedures to be followed in seeking Commission consent to such transfer.

Issued: March 9, 1989.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–5981 Filed 3–10–89; 12:32 pm]

BILLING CODE 6712-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 13, 20, 27, and April 3, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of March 13

Monday, March 13

2:00 p.m.
Classified Security Briefing (Closed—Ex. 1)

Wednesday, March 15

10:00 a.m.
Briefing on Acceptance by DOE of Greater Than Class C Waste (Public Meeting)

2:00 p.m.
Preliminary Briefing on the Status of NUREG–1150 (Public Meeting)

Thursday, March 16

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 20—Tentative

Wednesday, March 22

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 27—Tentative

Tuesday, March 28

2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for South Texas, Unit 2 (Public Meeting)

Wednesday, March 29

10:00 a.m.
Briefing on Staff Proposal on Continuity of Government Program (Closed—Ex. 1)

2:00 p.m.
Briefing on Status of West Valley Project (Public Meeting)

Thursday, March 30

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for Vogtle, Unit 2 (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)

Week of April 3—Tentative

Wednesday, April 5

2:00 p.m.
Briefing on Certification of Radiographers (Public Meeting)

Thursday, April 6

10:00 a.m.
Briefing on Status of Activities with the Center for Nuclear Waste Regulatory Analysis (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Briefing on Status of Generic Issues (Public Meeting) scheduled for March 6, postponed. By a vote of 4–0 (Commissioner Roberts not present) on March 6, 1989, the Commission determined pursuant to 5 U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that Commission business required that "Affirmation of Reconsideration of Decommissioning Funding Order CLI–88–10 and Commission Ruling on Intervenors' Motion for Directed Certification of Scheduling Issues" (Public Meeting) scheduled for March 6, 1989, be held on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserve basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORAMTION: William Hill (301) 492–1661.

William M. Hill, Jr.,

Office of the Secretary.

March 10, 1989.

[FR Doc. 89–5992 Filed 3–10–89; 2:46 pm]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (54 FR 9964 March 8, 1989).

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Friday, March 3, 1989.

CHANGES IN THE MEETING: Additional item.

The following item will be considered at an open meeting for Tuesday, March 14, 1989, at 10:00 a.m.

Consideration of whether to issue a release announcing the adoption of final rules with regard to Regulation D, the limited offering exemptive provisions from the registration requirements of the Securities Act of 1933. An amendment would add to the lists of accredited investors certain governmental employee benefit plans with total assets in excess of $5 million. Other changes address the issue of substantial and good faith compliance with the terms, conditions and requirements of the regulation. For further information, please contact Richard Wulff or William Toomey at (202) 272–2644.

Commissioner Cox, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Pat Daugherty at (202) 272–2200.

Jonathan G. Katz,

Secretary.

March 9, 1989.

[FR Doc. 89–5982 Filed 3–10–89; 12:32 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 54, No. 48
Tuesday, March 14, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 90127-9027]

Announcing Request for Applications Beta Test Sites for NIST POSIX Conformance Test Suite (NIST-PCTS)

Correction

In notice document 89-4127, beginning on page 7820, in the issue of Thursday, February 23, 1989, make the following correction:

In the second column, under "**DATE**", in the third line, the date should read "March 27, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TA89-1-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

Correction

In notice document 89-5482, appearing on page 10045 in the issue of Thursday, March 9, 1989, make the following correction:

The docket number, which appears at the head of the document beginning in the second column, should read as set forth above.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL 3311-1]

Underground Injection Control Programs on Indian Lands

Correction

In rule document 88-24121, beginning on page 43084, in the issue of Tuesday, October 25, 1988, make the following correction:

On page 43089, in the second column, in § 147.1651(b), in the fourth and fifth lines the date should read "June 25, 1984".

BILLING CODE 1505-01-D

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 352

[Docket No. 352 INT.]

Commercial Nuclear Power Plants; Emergency Preparedness Planning

Correction

1. On the cover page for rule document 89-4635, beginning on page 8512 in the issue of Tuesday, February 28, 1989, in the second line of the subject heading, "Final" should have read "Interim".

2. In rule document 89-4635, on page 8513, in the third column, in the fourth complete paragraph, in the eighth line, "rules" should read "rule".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veteran's Employment and Training

Solicitation for Grant Application; Job Training Partnership Act, Title IV, Part C, Program Year 1989

Correction

In notice document 89-5024 appearing on page 9095 in the issue of Friday, March 3, 1989, make the following correction:

In the first column, under **DATE**, in the second line, "not" should read "now".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8223]

Income Taxes; Branch Tax; Correction

Correction

In rule document 89-21831 appearing on page 37294 in the issue of Monday, September 26, 1988, make the following corrections:

§ 1.884-5T [Corrected]

1. In the second column, the section heading that reads "§ 1.844-5T [Corrected]" should read as set forth above.

2. In the same column, in **Par. 3**, in the first line, "§ 1.844-5T(b)(2)(i)(B)" should read "§ 1.884-5T(b)(2)(i)(B)".

3. In the same column, in **Par. 4**, in the first line, "§ 1.844-5T(b)(2)(i)(D)" should read "§ 1.884-5T(b)(2)(i)(D)".

BILLING CODE 1505-01-D

federal register

Tuesday
March 14, 1989

Part II

United States Information Agency

Department of the Treasury
Customs Service

Findings and Determinations by the Deputy Director Under the Convention on Cultural Property Implementation Act; Notice

Import Restrictions on Cultural Textile Artifacts From Bolivia; Notice

UNITED STATES INFORMATION AGENCY

Findings and Determinations by the Deputy Director Under the Convention on Cultural Property Implementation Act (Pub. L. 97–446, as amended)

Pursuant to the authority vested in me under Executive Order 12555, and USIA Delegation Order No. 86–3 of March 18, 1986 (51 FR 10137),

Findings

I hereby find:

(1) That Government of Bolivia made a request to the United States Government of the type and in the form required by section 303(a) of the Act, 19 U.S.C. 2602(a), on May 6, 1988, seeking emergency U.S. import restrictions and has supplied information which supports a determination that an emergency condition exists with respect to certain ethnological material from the community of Coroma, which material was identified as comprising a part of Bolivia's cultural patrimony in danger of being dispersed and fragmented in crisis proportions;

(2) That, pursuant to section 303(f)(1), 19 U.S.C. 2602(f)(1), notification of this request was published in the **Federal Register** on May 20, 1988 (53 FR 11544);

(3) That, pursuant to section 303(f)(2), 19 U.S.C. 2602(f)(2), this request was submitted to the Cultural Property Advisory Committee on May 19, 1988 for investigation, review and recommendation;

(4) That on August 4, 1988, the Committee transmitted to me its Report within the statutory ninety (90) day period prescribed in section 304(c)(2), 19 U.S.C. 2603(c)(2);

(5) That the Committee, in accordance with the requirements of section 306(f), 19 U.S.C. 2605(f), has thoroughly considered the request of Bolivia and has investigated the situation described in it;

(6) That the Committee recommends that emergency import restrictions be imposed on certain ethnological material from the community of Coroma;

(7) That the ethnological material which is the subject of the request consists of antique ceremonial textiles from the community of Coroma, situated high in the southern Altiplano region of the Andes, in Quijarro Province, Department of Potosi, which for centuries have been kept in bundles called q'epis that the ayllus of Coroma have passed from generation to generation as the collective inheritance from ancestors who lived near sacred areas;

(8) That the antique ceremonial textiles of Coroma are a part of the remains of a particular culture, the record of which is in jeopardy from dispersal and fragmentation which is, or threatens to be, of crisis proportions;

(9) That the imposition of emergency import restrictions on a temporary basis would, in whole or in part, reduce the incentive for dispersal and fragmentation of this ethnological material from the community of Coroma.

Determinations

Now, therefore, in accordance with the aforementioned authority vested in me, I hereby determine:

(1) That, pursuant to section 304(b) of the Act, 19 U.S.C. 2603(b), an emergency condition exists with regard to the antique ceremonial textiles from the community of Coroma;

(2) That the import restrictions set forth in section 307, 19 U.S.C. 2606, be applied to the antique ceremonial textiles of the community of Coroma; and

(3) That in accordance with the provisions of section 304(c)(3), 19 U.S.C. 2603(c)(3), the duration of such restrictions shall extend until May 6, 1993, five years from the date on which the Government of Bolivia's request was made to the United States.

Dated: January 19, 1989.

Marvin L. Stone,

Deputy Director.

[FR Doc. 89–5871 Filed 3–13–89; 8:45 am]

BILLING CODE 8230–01–M

Customs Service

[T.D. 89–37]

Import Restrictions on Cultural Textile Artifacts From Bolivia

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of import restrictions.

SUMMARY: This document advises the public that, in accordance with a request from the Government of Bolivia, restrictions are being placed on the importation of certain culturally and historically significant textile artifacts from Bolivia. This action, which is being taken pursuant to the Convention on Cultural Property Implementation Act and in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and in cooperation with the U.S. Information Agency, will assist Bolivia in protecting its cultural property.

EFFECTIVE DATE: March 14, 1989.

FOR FURTHER INFORMATION CONTACT: Legal Aspects: Samuel Orandle, Commercial Rulings Division (202–566–5765).

Operational Aspects: Phyllis Henry, Trade Operations (202–566–7877). Both are at U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

SUPPLEMENTARY INFORMATION:

Background

The value of cultural property, whether archaeological or ethnological in nature, is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people's origin, history, and traditional setting. The importance and popularity of such items regrettably makes them targets of theft, encourages clandestine looting of archaeological sites, and accompanying illegal exporting and importing.

There has been growing concern in the U.S. regarding the need for protecting endangered cultural property. The appearance in the U.S. of stolen or illegally exported artifacts from other countries where there has been recent pillaging has, on occasion, strained our foreign and cultural relations. This situation, combined with the concerns of the museum, archaeological, and scholarly communities, was recognized by the President and Congress. It became apparent that it was in the national interest for the U.S. to join with other countries to control illegal trafficking of such articles in international commerce.

The U.S. joined international efforts and actively participated in deliberations resulting in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972). U.S. acceptance of the 1970 UNESCO Convention was codified into U.S. law as the "Convention on Cultural Property Implementation Act" (Pub. L. 97–446, 19 U.S.C. 2601 *et seq.*). The spirit of the Convention was enacted into law to promote U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that are of importance not only to the nations whence they originate, but also to greater international understanding of mankind's common heritage. In 1983, the U.S. became the first major art importing

country to implement the 1970 Convention.

It was with these goals in mind that Customs issued interim regulations to carry out the policies of the act. The interim regulations, which were set forth in §§ 12.104–12.104; Customs Regulations (19 CFR 12.104), were published in the **Federal Register** as T.D. 85–107 on June 25, 1985 (50 FR 26193), and took effect immediately. After consideration of comments received on the interim regulations, final regulations were issued as T.D. 86–52, published in the **Federal Register** on February 27, 1986 (51 FR 6905), and took effect on March 31, 1986.

Bolivia

Under section 303(a)(3) of the Cultural Property Implementation Act (19 U.S.C. 2602(a)(3)), the Government of Bolivia, a State Party to the 1970 UNESCO Convention, requested the U.S. Government to impose emergency import restrictions on certain endangered cultural material to assist Bolivia in protecting its cultural patrimony. Notice of receipt of the request was published by the U.S. Information Agency (USIA) in the **Federal Register** on May 20, 1988 (52 FR 11544).

On May 19, 1988, the request was referred to the Cultural Property Advisory Committee, which conducted a review and investigation, and submitted its report in accordance with the provisions of 19 U.S.C. 2605(f) to the Deputy Director, USIA, on August 4, 1988. The Committee found the situation in Bolivia to be an emergency and recommended that emergency import restrictions be imposed on certain ethnological material from the community of Coroma. The Deputy Director, pursuant to the authority vested in him under Executive Order 12555 and USIA Delegation Order 86–3, considered the Committee's recommendations and made his determination that emergency import restrictions be applied. (See this issue of the **Federal Register**.)

The Commissioner of Customs, in consultation with the Deputy Director of the USIA, has drawn up a list of covered ethnological material from the community of Coroma in Bolivia. The materials on the list are subject to the 1970 UNESCO Convention and § 12.104a, Customs Regulations. As provided in 19 U.S.C. 2601 *et seq.*, and § 12.104a, Customs Regulations, listed material from this area may not be imported into the U.S. unless accompanied by documentation certifying that the material left Bolivia legally and not in violation of the laws of Bolivia.

In the event an importer cannot produce the certificate, documentation, or evidence required in § 12.104c, Customs Regulations, at the time of making entry, § 12.104d provides that the district director shall take custody of the material until the certificate, documentation, or evidence is presented. Section 12.104e provides that if the importer states in writing that he will not attempt to secure the required certificate, documentation, or evidence, or the importer does not present the required certificate, documentation, or evidence to Customs within the time provided, the material shall be seized and summarily forfeited to the U.S. in accordance with the provisions of Part 162, Customs Regulations (19 CFR Part 162).

Antique Ceremonial Textiles From Coroma, Bolivia

U.S. import restrictions are applied to the antique ceremonial textiles from the community of Coroma, Bolivia. These are woven garments, dating from before 1500 to approximately 1850 A.D., owned communally by the Native people of this small Andean community. For centuries, they have played an integral role in the lives of the people of Coroma who wear them in special ceremonies. When not worn, they are honored and stored in bundles.

Textiles from this community may be identified by their appearance and texture. They are plain, not ornate, with varying widths of vertical stripes or bands. A few textiles display a checkerboard pattern. In color, the textiles are usually red, blue, or purple, or a shade of yellow, tan or brown. Unlike the more modern textiles from this Andean region, Coroma's ceremonial garments are made from high quality yarn from the wool of vicuna, or llama, and feels very soft to the touch, similar to silk.

Coroma's ceremonial garments consist of:

1. *Tunic/Poncho:* (asku or urku for women; unku or ccahua for men; poncho) A tunic is a woven garment consisting of either one or two pieces of woven cloth with sides stitched together; a poncho is a woven garment resembling a tunic but without the sides stitched together. (Approximate size: women's tunic is 1.2 m. by 90 cm.; Men's tunic is 82 cm. by 78 cm.)

2. *Cape/Shawl:* (llaqota or manta; llixilla or awayo; isqayo) Woven garment worn either on the back, like a cape, worn over the back and arms, like a shawl. (Approximate size: 80 cm. by 79 cm.)

3. *Small Ceremonial Cloth:* (tari or inkuna) Woven square cloth small in size used as a woman's head covering for ceremonial purposes.

4. *Hat/Headdress* (sombrero, pillu) A sombrero is a hat made from vicuna hide; a pillu is a wool headdress made in the shape of a crown with fringe.

Dated: March 7, 1989.

William von Raab,

Commissioner of Customs.

[FR Doc. 89–5872 Filed 3–13–89; 8:45 am]

BILLING CODE 4820–02–M

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